## NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

**3301. Adulteration of oysters. U. S. v. Edward Bennett. Plea of nolo contendere. Sentence suspended.** (F. & D. No. 4493. I. S. No. 20318–d.)

At a stated term of the District Court of the United States for the Eastern District of New York, the grand jurors of the United States within and for the district aforesaid, acting upon a report by the Secretary of Agriculture, returned an indictment against Edward Bennett, Brooklyn, N. Y., charging shipment by said defendant, in violation of the Food and Drugs Act, on April 17, 1912, from the State of New York into the State of Pennsylvania, of a quantity of oysters which were adulterated.

Examination of a sample of the product by the Bureau of Chemistry of this department showed the following results: Five out of 5 oysters showed the presence of gas-producing organisms in bile fermentation tubes after 3 days' incubation at 37° C. in 1 cc quantities; 5 out of 5 oysters in 0.1 cc quantities; 4 out of 5 oysters in 0.01 cc quantities; 0 out of 5 oysters in 0.001 cc quantities; 100 streptococci per cc isolated from 1 oyster; 10 streptococci per cc isolated from each of 3 oysters; 1 streptococcus per cc isolated from 1 oyster; score, 410 points.

Adulteration of the product was charged in the indictment for the reason that it consisted in part of filthy, decomposed, and putrid animal substance.

On January 12, 1914, the defendant entered a plea of nolo contendere to the indictment, and the court suspended sentence.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 26, 1914.*

**3302. Adulteration of oysters. U. S. v. Warren Cornell. Plea of nolo contendere. Sentence suspended.** (F. & D. No. 4504. I. S. No. 20716–d.)

At the November, 1912, term of the District Court of the United States for the Eastern District of New York, the grand jurors of the United States of America within and for the district aforesaid, acting upon a report by the Secretary of Agriculture, returned an indictment against Warren Cornell, late of the county of Queens, State and Eastern District of New York, alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about April 17, 1912, from the State of New York into the State of Pennsylvania, of a quantity of oysters which were adulterated.

Bacteriological examination of a sample of the product by the Bureau of Chemistry of this department showed the following results: Five out of 5 oysters showed the presence of gas-producing organisms in bile fermentation tubes after 4 days' incubation at 37° C., in 1 cc quantities; 5 in 0.1 cc quantities; 3 in 0.01 cc quantities; 0 in 0.001 cc quantities; score, 320 points; 1 streptococcus per cc isolated from each of 2 oysters; 10 streptococci per cc isolated from each of 3 oysters; 10 *B. coli* group per cc isolated from each of 2 oysters; 100 *B. coli* group per cc isolated from each of 3 oysters.

Adulteration of the product was alleged in the information for the reason that it consisted in part of filthy, decomposed, and putrid animal substance.

On January 19, 1914, the defendant entered a plea of nolo contendere to the information, and the court suspended sentence.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *May 26, 1914.*

**3303. Adulteration and misbranding of Scuppernong wine. U. S. v. 4 Cases of Scuppernong Wine. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 4509. S. No. 1503.)

On September 12, 1912, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 4 cases, each containing 1 dozen bottles of Scuppernong wine, remaining unsold in the original unbroken packages and in possession of O. B. Cook & Co., Detroit, Mich., alleging that the product had been shipped on August 17, 1912, by the A. Schmidt Jr. & Bros. Wine Co., Sandusky, Ohio, and transported from the State of Ohio into the State of Michigan, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled "Ohio Golden Eagle Scuppernong Wine. The A. Schmidt Jr. and Bros. Wine Co. Sandusky, Ohio."

It was alleged in the libel that the product was misbranded in violation of paragraph 1 of section 8 of the Food and Drugs Act and also in violation of paragraphs 1, 2, and 4 of section 8, under the classification of "Food," in said act. It was also alleged that the product was adulterated in violation of section 7 of said act and of paragraphs 1 and 2 under "Food" in said act, an examination of the samples of said product by the Bureau of Chemistry of the Department of Agriculture having revealed that said product was imitation Scuppernong wine, consisting of a mixture of pomace wine and other wines, and very little if any Scuppernong wine, which had been substituted for Scuppernong wine, thus reducing and injuriously affecting the quality and strength of the article. It was further alleged that the product was liable to condemnation and confiscable under the terms and provisions of the Food and Drugs Act, for the reason that the cases of wine and each of them by the label contained on the retail containers thereof were labeled and printed so as to deceive and mislead the purchasers thereof, and said product was adulterated in that a substitution had been mixed and packed with it so as to reduce and injuriously affect its quality and strength, and in that a substance had been substituted in part for the article, an analysis of the product disclosing the fact that said product was an imitation of Scuppernong wine prepared wholly or in part from pomace wine and other wines and very little if any Scuppernong wine.

On October 6, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *May 26, 1914.*

**3304. Adulteration of oysters. U. S. v. The H. W. Schmeelk Oyster Co. Plea of nolo contendere. Sentence suspended.** (F. & D. No. 4529. I. S. No. 20317-d.)

On November 7, 1912, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the H. W. Schmeelk Oyster Co., a corporation, Brooklyn, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on April 17,

1912, from the State of New York into the State of Pennsylvania, of a quantity of oysters which were adulterated.

Examination of a sample of the product by the Bureau of Chemistry of this department showed the following results: Five out of 5 oysters showed the presence of gas-producing organisms in bile fermentation tubes after 3 days' incubation at 37° C. in 1 cc quantities; 5 out of 5 oysters in 0.1 cc quantities; 3 out of 5 oysters in 0.01 cc quantities; 1 out out of 5 oysters in 0.001 cc quantities; score, 410 points; 1 streptococcus per cc isolated from each of 2 oysters; 10 streptococci per cc isolated from each of 2 oysters.

Adulteration of the product was alleged in the information for the reason that it consisted in part of filthy, decomposed, and putrid animal substance.

On January 12, 1914, the defendant company entered a plea of nolo contendere to the information, and the court suspended sentence.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 26, 1914.*

**3305. Adulteration of oysters. U. S. v. William H. Morrison. Plea of nolo contendere. Sentence suspended.** (F. & D. No. 4535. I. S. No. 20717–d.)

At a stated term of the District Court of the United States for the Eastern District of New York, the grand jurors of the United States within and for the district aforesaid, acting upon a report by the Secretary of Agriculture, returned an indictment against William H. Morrison, Brooklyn, N. Y., charging shipment by said defendant, in violation of the Food and Drugs Act, on April 17, 1912, from the State of New York into the State of Pennsylvania, of a quantity of oysters which were adulterated.

Examination of a sample of the product by the Bureau of Chemistry of this department showed the following results: Five out of 5 oysters showed the presence of gas-producing organisms in bile fermentation tubes after 3 days' incubation at 37° C. in 1 cc quantities; 5 out of 5 oysters in 0.1 cc quantities; 4 out of 5 oysters in 0.01 cc quantities; 2 out of 5 oysters in 0.001 cc quantities; 1 streptococcus per cc isolated from 1 oyster; 10 streptococci per cc isolated from each of 3 oysters; 100 streptococci per cc isolated from 1 oyster; score, 1,400 points.

Adulteration of the product was charged in the indictment for the reason that it consisted in part of filthy, decomposed, and putrid animal substance.

On January 12, 1914, the defendant entered a plea of nolo contendere to the indictment, and the court suspended sentence.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 26, 1914.*

**3306. Misbranding of cottonseed meal. U. S. v. J. Lindsay Wells (J. Lindsay Wells Commission Co.). Plea of guilty. Fine, $100 and costs.** (F. & D. No. 4542. I. S. Nos. 4614–d, 4618–d.)

On February 15, 1913, the United States attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against J. Lindsay Wells, doing business and trading under the name of the J. Lindsay Wel's Commission Co., Memphis, Tenn., alleging shipment by said defendant, in violation of the Food and Drugs Act:

(1) On November 9, 1911, from the State of Tennessee into the State of Indiana, of a quantity of cottonseed meal which was misbranded. This product was labeled: "J. Lindsay Wells Co., Memphis, Tenn., Star Brand Choice-Finely-Ground Cotton Seed Meal, Sacks 100 lbs. each. Sold Basis Analysis: Ammonia 8%; Nitrogen 6½%; Protein 41%; Carbohydrates 25%; Oil and Fat 9%; Crude Fibre 7%. This meal is made from decorticated cotton seed."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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| Crude fiber (per cent) | 11.94 |
| Protein (per cent) | 36.04 |
| Moisture (per cent) | 6.71 |
| Ether extract (per cent) | 7.32 |

Misbranding of the product was alleged in the information for the reason that it bore certain brands and labels purporting to state thereon the ingredients of said cottonseed meal, which said label was in the words and figures set forth above, and said label set forth that said cottonseed meal contained 41 per cent protein, oil and fat, 9 per cent, crude fiber, 7 per cent, whereas, in truth and in fact, it did not contain 41 per cent protein and 9 per cent oil and fat, and did contain more than 7 per cent crude fiber; that, in truth and in fact, said cottonseed meal contained a much less amount of protein and much less amount of oil and fat than stated on said label, and contained a much greater amount than 7 per cent of crude fiber; that said representations and statements upon said brands and labels upon the cottonseed meal were false, untrue, misleading, and calculated to deceive the purchaser or purchasers of said cottonseed meal.

(2) On or about December 18, 1911, from the State of Kentucky into the State of Indiana, of a quantity of cottonseed meal which was misbranded. This product was labeled: "J. Lindsay Wells Co. Memphis, Tenn. Star Brand Choice-Finely-Ground Seed Meal. Sacks 100 lbs. each. Sold Basis Analysis: Ammonia 8%; Nitrogen 6½%; Protein 41%; Carbohydrates 25%; Oil and Fat 9%; Crude Fibre 7%. This meal is made from decorticated cotton seed. Always Twinkling For Business. (Red Star on Tag.)"

Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

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|---|---|
| Moisture (per cent) | 6.77 |
| Ether extract (per cent) | 6.99 |
| Crude fiber (per cent) | 11.32 |
| Protein (per cent) | 36.75 |

Misbranding of the product was alleged in the information for the reason that it bore certain brands and labels purporting to state thereon the ingredients of said cottonseed meal, which said label was in the words and figures set forth above, and said label set forth that said cottonseed meal contained 41 per cent protein, oil and fat, 9 per cent, crude fiber, 7 per cent, whereas, in truth and in fact, it did not contain 41 per cent protein and 9 per cent oil and fat, and did contain more than 7 per cent crude fiber; that, in truth and in fact, said cottonseed meal contained a much less amount of protein and oil and fat, and did contain a much greater amount of crude fiber; that the representations and statements upon said brands and labels upon the cottonseed meal were false, untrue, misleading, and calculated to deceive the purchaser or purchasers of said cottonseed meal.

On March 28, 1913, the defendant filed a demurrer to the information, which was heard by the court, and on April 21, 1913, the demurrer to the information was sustained, as will more fully appear from the following opinion by the court (McCall, *J.*):

This case is before me upon a demurrer to the information, wherein J. Lindsay Wells is charged with a violation of "The Pure Food and Drugs Act." (U. S. Compiled Statutes, Supplement 1909, page 1187.)

There are two grounds of demurrer:

First. The said information fails to allege and state that the information therein contained had been sworn to or the facts made upon oath before a

United States commissioner, and, in fact, no affidavit had been made or examination had before a proper officer, previous to the filing of said information, touching the matters and things in said information set out.

Second. Said information is not issued in compliance with article 4 of the Amendments to the Constitution of the United States.

The record shows that on February 15, 1913, the Honorable Casey Todd, United States district attorney, filed with the clerk of this court an information, setting out certain acts of J. Lindsay Wells, which are alleged to be a violation of the statutes made and provided in such cases. Upon the filing of said information, and on the same day, there was issued by the clerk a capias out of this court for the arrest of J. Lindsay Wells, commanding that he be brought before this court on the fourth Monday of May, 1913, to answer the charges in said information. Also, on the same day, there was issued a summons for said J. Lindsay Wells to appear and answer said information. Said summons and capias were executed as commanded by the United States marshal and returned and filed in court on February 17, 1913, on which date said Wells appeared before A. G. Mathews, United States commissioner, and gave bond for his appearance at the May term of the court to further answer said information.

The demurrer raises the question as to the validity of the information and the proceedings thereunder.

There was no affidavit or other paper, tending to support the statement contained in the information, other than the information itself, signed by the United States district attorney, Hon. Casey Todd.

There is no question that offenses of this character may be prosecuted upon information and without an indictment. The question is, Is the proceeding by information in conformity with law?

In the case of U. S. *v.* Morgan, 222 U. S. 274, the Supreme Court, in passing upon the question as to whether or not it was necessary to give notice to the accused of the purpose of the Government to indict him for a violation of the "Pure Food and Drugs Act," held that such notice was not necessary, and, among other things, said:

"A further answer is, that as to this and every other offense the Fourth Amendment furnishes the citizen the nearest practicable safeguard against malicious accusations. He can not be tried on an information unless it is supported by the oath of some one having knowledge of the facts showing the existence of probable cause."

The last sentence in the excerpt may possibly be held to be dictum in that case, but it gives expression to the views of the Supreme Court touching the proper construction of the Fourth Amendment to the Constitution of the United States, in cases prosecuted upon information.

There is nothing in the case at bar that indicates that the information filed by the district attorney is supported "by the oath of some one having knowledge of the facts showing the existence of probable cause." Indeed, it is conceded by the Government that no such affidavit or statement was made by anyone and presented with the information when application was made, either for the summons or capias for the defendant.

It is insisted by the Government that the information filed, signed by the district attorney, is itself made under oath, since the district attorney is a sworn officer of the Government, and it was not necessary for him to further have verified it.

I do not think this contention is in keeping with the language above quoted from the case of U. S. *v.* Morgan. For to so hold would be to say that the information is self-supporting and needs no support by the oath of some one having knowledge of the facts, showing the existence of probable cause.

This view is also sustained by Judge Ray, in the case of U. S. *v.* Baumert et al., 179 Fed. 735.

In addition, it seems to me that the proceeding in this case is irregular and unauthorized by law.

As has been seen, the district attorney prepared his information, filed it with the clerk of the United States District Court, which official thereupon issued the capias and summons for the defendant. The cases to which my attention has been called, impress me with the idea that before a summons or capias is issued in cases of this character, wherein the defendant is charged with a crime upon a conviction for which he may be fined and imprisoned, that the information should be presented to the judge, supported by the oath

of some one having knowledge of the facts, showing the existence of probable cause. This evidence may be oral or by affidavits. Upon the hearing of which, the court may or may not cause the arrest of the accused, and have him brought before the court to answer the charge, just as he may believe that the evidence does or does not show probable cause. In other words, before a citizen is arrested, there should be facts sworn to and presented to the court, showing the existence of a probable cause for such arrest. See U. S. *v.* Baumert, supra, and authorities there cited.

I think the demurrer in this case should be sustained, and the information quashed and the defendant discharged.

An order will be entered accordingly.

On September 3, 1913, a new information, properly supported by affidavits, was filed by the United States attorney, charging misbranding of the products in the same manner and in the same words and figures as in the information that was quashed when the demurrer thereto was sustained, and on December 31, 1913, the defendant entered a plea of guilty to the information last filed, and the court imposed a fine of $100, with costs of $12.60.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *May 26, 1914.*

**3307. Adulteration and misbranding of vanilla extract. U. S. v. 1 Barrel of Vanilla Extract. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 4553. S. No. 1513.)

On September 21, 1912, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 barrel containing 25 gallons, more or less, of vanilla extract, remaining unsold in the original unbroken packages and in possession of the Paris Candy Co., Flint, Mich., alleging that the product had been shipped on May 15, 1912, from the State of Maryland into the State of Michigan, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "XXXXX Vanilla Manufacturers Extracts, Fruit juices, etc. Vanilla beans, Essential oils colors etc. the William Haigh Company, Manufacturing Chemists, Baltimore Md. 128 S. Calvert St. Guaranteed by the William Haigh Co. Under the Food & Drugs Act of June 30, 1906, No. 6632. The William Haigh Co. 128 S. Calvert St. Baltimore Md."

It was alleged in the libel that the product was misbranded in violation of section 8, paragraphs 2 and 4, under the classification of "Food" in the Food and Drugs Act, and was adulterated in violation of section 7 of said act, paragraphs 1 and 2 under "Food," an examination of a sample of the product by the Bureau of Chemistry of the Department of Agriculture having revealed that it was a dilute extract of vanilla which had been mixed and packed in such a manner as to reduce, lower, and injuriously affect its quality and strength and had been substituted for the product, and was therefore adulterated, and that it was also labeled "XXXXX Vanilla," when it was an inferior diluted extract of vanilla, and the product was labeled in such a manner as to deceive and mislead the purchaser and therefore was misbranded in violation of said act as aforesaid.

On October 7, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *May 26, 1914.*

**3308. Adulteration of lemon yellow color. U. S. v. John N. Hickok and Bert Hickok (J. N. Hickok & Son). Plea of guilty. Fine, $30. (F. & D. No. 4626. I. S. No. 12143-c.)**

On April 22, 1913, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against John N. Hickok and Bert Hickok, doing business under the firm name and style of J. N. Hickok & Son, New York, N. Y., alleging shipment by said defendants, from the State of New York into the State of Missouri, of a quantity of lemon yellow color which was adulterated. The product was labeled: "Non-Poisonous Color—Soluble Lemon Yellow—John N. Hickok & Son. 85 Murray St., New York."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the presence of 18.75 parts per million of arsenic as $As_2O_3$. Adulteration of the product was alleged in the information for the reason that it contained an added poisonous and deleterious ingredient, to wit, arsenic, which might render the said article injurious to health.

On October 14, 1913, a plea of guilty was entered on behalf of defendants, and the court imposed a fine of $30.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 26, 1914.*

**3309. Adulteration and misbranding of vinegar. U. S. v. Haarman Vinegar & Pickle Co. Plea of guilty. Fine, $75 and costs. (F. & D. No. 4741. I. S. No. 7304-d.)**

On March 3, 1913, the United States attorney for the Northern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Haarman Vinegar & Pickle Co., a corporation, Sioux City, Iowa, alleging the shipment by said company, in violation of the Food and Drugs Act, on or about January 4, 1912, from the State of Iowa into the State of South Dakota, of a quantity of so-called pure cider vinegar, which was adulterated and misbranded. The product was labeled: "Dacotah Brand Pure Cider Vinegar 4-1/2 Acetic 47 Gals. Mfd. for Andrew Kuehn Co., Sioux Falls, S. D."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results, expressed in grams per 100 cc, except where otherwise indicated:

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| Glycerol | 0.09 |
| Solids | 1.70 |
| Nonsugar solids | 0.99 |
| Reducing sugar, invert before inversion after evaporation | 0.71 |
| Sugar in solids (per cent) | 41.7 |
| Polarization, direct, at 20° C. (°V.) | −2.2 |
| Ash | 0.29 |
| Alkalinity of soluble ash (cc N/10 acid per 100 cc) | 24.8 |
| Total phosphoric acid (mg per 100 cc) | 20.1 |
| Acid, as acetic | 4.77 |
| Fixed acid, as malic | 0.02 |
| Lead precipitate: Light. | |
| Color (degrees, brewer's scale, 0.5 inch) | 3.0 |
| Ash in nonsugar solids (per cent) | 29.0 |

Adulteration of the product was alleged in the information for the reason that it consisted of cider vinegar and the same had been adulterated by reason of the fact that other substances. to wit. a dilute solution of acetic acid, or dis-

tilled vinegar, and a product high in reducing sugar and certain mineral matter, had been mixed with the said article of cider vinegar, so as to reduce or lower, or injuriously affect the quality and strength of the said cider vinegar, and for the further reason that other substances, to wit, a dilute solution of acetic acid or distilled vinegar, and a product high in reducing sugars and certain mineral matter, had been substituted wholly or in part for the said article of cider vinegar. Misbranding of the product was alleged for the reason that the package was labeled and branded and bore the statement set forth above regarding the article or substance contained therein, which said label, brand, and statement was false and misleading in that said package did not contain cider vinegar, but, on the contrary, consisted in whole or in part of a dilute solution of acetic acid or distilled vinegar and a product high in reducing sugars and added mineral matter.

On November 6, 1913, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $75 and costs.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *May 26, 1914.*

**3310. Adulteration and misbranding of confectionery. U. S. v. Powell's. Plea of guilty. Fine, $25.** (F. & D. No. 4767. I. S. No. 13349–d.)

On May 7, 1913, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Powell's (Inc.), a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on April 17, 1912, from the State of New York into the State of Massachusetts, of a quantity of confectionery which was adulterated and misbranded. The product was labeled: "Powell's New York Chocolate Cream Maraschino Cherries."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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| Weights: | |
| Sample (grams) | 210 |
| Liquor (grams) | 2.5 |
| Cherries (grams) | 34.0 |
| Alcohol in cherries and liquor (per cent by weight) | 0.8 |
| Benzaldehyde in cherries and liquor (mg per 100 cc) | 1.5 |

Color: Ponceau 3 R.

Cherries are large ones of Bigarreaux type. The cherries are evidently the imitation maraschino cherries of the trade.

Adulteration of the product was alleged in the information for the reason that it contained a certain spirituous liquor, to wit, alcohol. Misbranding of the article was alleged for the reason that the statements, designs, and devices upon the label thereof regarding said article and the ingredients and substances contained therein were false and misleading, and said label was calculated to mislead and deceive the purchaser thereof in that said label would indicate that the cherries used in said confectionery were genuine maraschino cherries, whereas, in truth and in fact, the cherries used therein were not maraschino cherries, but were cherries of the Bigarreaux type, artificially colored and flavored.

On October 14, 1913, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *June 20, 1914.*

**3311. Misbranding of coffee. U. S. v. 375 Pounds of So-called "Boston Roast Fine Java Style Coffee," and 250 Pounds of So-called "Boston Roast Fine Mocha Style Coffee." Consent decree of condemnation and forfeiture. Product released on bond. (F. & D. No. 4900. S. No. 1624.)**

On December 23, 1912, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 375 pounds of so-called "Boston Roast Fine Java Style Coffee," and 250 pounds of so-called "Boston Roast Fine Mocha Style Coffee," contained in 25 pails of 25 pounds each, remaining unsold in the original unbroken packages in possession of J. Levi and Co., Schenectady, N. Y., alleging that the product had been shipped on or about November 9, 1912, by W. F. Johnston and Co., Boston, Mass., and exported from the State of Massachusetts into the State of New York, and charging misbranding in violation of the Food and Drugs Act. Fifteen of the pails were labeled: "Boston Roast Fine Java Style Coffee, carefully selected, roasted and packed expressly for J. Levi & Co., wholesale groceries, Schenectady, New York." Ten of the pails were labeled: "Boston Roast Fine Mocha Style Coffee, carefully selected, roasted and packed expressly for J. Levi & Co., wholesale groceries, Schenectady, New York."

Misbranding of the product was alleged in the libel for the reason that the labels and the representations and statements contained thereon were false and misleading and intended and calculated by the said W. F. Johnston and Co. and the said J. Levi and Co., as they well knew, to deceive, in that the said article, "Boston Roast Fine Java Style Coffee, carefully selected, roasted and packed expressly for J. Levi and Co., wholesale groceries, Schenectady, New York," was not Java style coffee, but consisted almost entirely of "Santos coffee," without any appreciable quantity of Java coffee contained therein, nor was it a coffee formerly known by the trade as Java style coffee; and in that the article "Boston Roast Fine Mocha Style Coffee, carefully selected, roasted and packed expressly for J. Levi and Co., wholesale groceries, Schenectady, New York," was not Mocha coffee, nor was it a coffee formerly known to the trade as Mocha style coffee, but it consisted almost entirely of "Santos coffee," and was without any appreciable quantity of Mocha coffee contained therein.

On December 10, 1913, the said J. Levi and Co., having appeared as claimants for the property, and having stipulated that the allegations stated in the libel were true, a jury having been waived, and the case having been submitted to the court, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be redelivered to said claimants upon payment of the costs of the proceedings and the execution of bond in the sum of $300, in conformity with section 10 of the act.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *June 20, 1914.*

**3312. Adulteration and misbranding of cream. U. S. v. International Milk Products Co. Plea of guilty. Sentence suspended. (F. & D. No. 4959. I. S. No. 36204-e.)**

On June 23, 1913, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the International Milk Products Co., a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on July 17, 1912, from the State of New York into the State of Virginia, of a quantity of cream

which was adulterated and misbranded. The product was labeled: "International Milk Products Co. (New York City Division) Producers of fancy cheese, pasteurized cream, ice cream, milk and butter, choice dairy products of every character, 356 Greenwich St., New York City. Cream. These goods have been properly pasteurized. International Table Cream Grade No. 36. Prepared and guaranteed by the International Milk Products Co. under Food & Drugs Act, June 30, 1906. Serial No. 35395."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that it contained 21.58 per cent of fat. Adulteration of the product was alleged in the information for the reason that a certain substance, to wit, milk, had been mixed and packed with said article so as to reduce and lower its quality and strength, and, further, in that another substance, to wit, milk, had been substituted in part for the genuine article, in that the said table cream Grade No. 36 purported to be a grade of cream containing 28 per cent of butter fat, whereas said article contained only 21.58 per cent of butter fat. Misbranding was alleged for the reason that the article was offered for sale under the distinctive name of a table cream containing 28 per cent of butter fat, whereas the said article was another article, to wit, a cream containing only 21.58 per cent of butter fat.

On October 4, 1913, the defendant company entered a plea of guilty to the information, and the court suspended sentence.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *June 20, 1914.*

**3313. Adulteration and misbranding of cream. U. S. v. International Milk Products Co. Plea of guilty. Fine, $75.** (F. & D. Nos. 4960, 4961. I. S. Nos. 36205–e, 36206–e.)

On June 23, 1913, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the International Milk Products Co., a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on July 20 and 22, 1912, from the State of New York into the State of Virginia, of two consignments of cream which was adulterated and misbranded. The product in both consignments was labeled: "International Milk Products Co. (New York City Division) Producers of fancy cheese, pasteurized cream, ice cream, milk and butter, choice dairy products of every character. 356 Greenwich St., New York City. Cream. These goods have been properly pasteurized. International Confectioners Cream, Grade No. 28. Prepared and guaranteed by International Milk Products Co. under Food & Drugs Act, June 30, 1906. Serial No. 35395."

Analysis of a sample of the shipment made July 20, by the Bureau of Chemistry of this department, showed that it contained 18.82 per cent of fat. Analysis of a sample of the shipment made July 22 by said bureau showed that it contained 14.2 per cent of fat.

Adulteration of the product in the above consignments was alleged in the information for the reason that another substance, to wit, milk, had been mixed and packed with the said article so as to reduce and lower its quality and strength, and, further, in that another substance, to wit, milk, had been substituted in part for said article, in that said cream Grade No. 28 purported to be a cream containing 20 per cent of butter fat, whereas, in truth and in fact, the said cream shipped as aforesaid on July 20, 1912, contained only 18.82 per cent of butter fat, and that shipped on July 22, 1912, contained only 14.2 per cent of butter fat. Misbranding was alleged for the reason that the article

was offered for sale under the distinctive name of a cream containing 20 per cent of butter fat, whereas, in truth and in fact, it was another article, to wit, a cream containing only 18.82 per cent of butter fat in the first shipment, and only 14.2 per cent of butter fat in the second shipment.

On October 14, 1913, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $75.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *June 20, 1914.*

**3314. Misbranding of molasses. U. S. v. American Molasses Co. Plea of guilty. Fine, $25.** (F. & D. No. 4969. I. S. No. 21260–d.)

On June 23, 1913, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the American Molasses Co., a corporation of New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on March 14 and April 5, 1912, from the State of New York into the State of Virginia, of a quantity of molasses which was misbranded. The product was labeled: "No. 7 Atlas Specialty Co., Richmond, Va. R. 57 56."

Analysis of a barrel of the product by a representative of the Department of Agriculture showed that it was marked "56," meaning 56 gallons, when it contained in fact only 54 gallons. It was alleged in the information that 25 of the barrels of the product were misbranded and labeled as aforesaid so as to deceive and mislead the purchaser thereof and that the labels on said barrels would indicate that they contained at least 56 gallons of molasses, whereas, in truth and in fact, each of said barrels contained less molasses, and the said article was further misbranded in that it was in package form and the contents were not plainly and correctly stated on the outside of said package in terms of measure, but were incorrectly stated in terms of measure as containing at least 56 gallons of molasses, whereas, in truth and in fact, each of said barrels contained a less quantity of molasses.

On October 14, 1913, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *June 20, 1914.*

**3315. Adulteration and misbranding of vinegar. U. S. v. 25 Barrels of So-called Sugar Vinegar. Judgment of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 5025. S. No. 1682.)

On February 10, 1913, the United States attorney for Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 barrels, more or less, of sugar vinegar, remaining unsold in the original unbroken packages and in possession of the B. C. Twenhofel Mfg. Co., of Kansas City Kans., alleging that the product had been shipped on or about January 9, 1913, by the Monarch Vinegar Works of Kansas City, Mo., and transmitted from the State of Missouri into the State of Kansas, and charging adulteration and misbranding in violation of the Food and Drugs Act. The barrels were labeled in stencil: "Sugar 85 grain."

Adulteration of the product was alleged in the libel for the reason that it was a distilled vinegar of [or (?)] a dilute acetic acid, [and that there was (?)] a reduction of quality and character of the product by the addition of distilled vinegar or dilute acetic acid, which had been substituted wholly or in part for sugar vinegar.

Misbranding was alleged for the reason that the quotations worded and designed on the stenciled label on the end of each of said barrels as hereinbefore set forth conveyed the impression that said vinegar or product was sugar vinegar of 85 [8.5 (?)] per cent strength when, in truth and in fact, said vinegar was wholly or in part a distilled acetic acid vinegar reduced in quality and character by the addition of distilled vinegar or dilute acetic acid which had been substituted wholly or in part for sugar vinegar, and said quotation, wording, and design on said labels were calculated to mislead the purchaser, and were, therefore, false and misleading.

On October 16, 1913, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *June 20, 1914.*

**3316. Adulteration of ice cream. U. S. v. Wm. Mitchell (Graham Ice Cream Co.). Plea of guilty. Fine, $50.** (F. & D. Nos. 5091, 5092. I. S. Nos. 36242–e, 36248–e.)

On July 10, 1913, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Wm. Mitchell, trading as the Graham Ice Cream Co., Graham, Va., alleging shipment by said defendant, in violation of the Food and Drugs Act, on August 25 and 27, 1912, from the State of Virginia into the State of West Virginia of a quantity of ice cream which was adulterated. The product in the shipment of August 25 was labeled: (On shipping tag) "Graham Ice Cream Co., Graham, Va. For M. H. Bleshm Address Bluestone, West Va. Train No. 9. 5 gallons Straw. Tub No. 694 8–25–12 No. 2307." (On tub) "Graham Ice Cream Co., Graham, Va. 694." The product in the shipment of August 27 was labeled: (On tag) "Graham Ice Cream Co., Graham, Va. For M. H. Bleshm Address Bluestone Jct. W. Va. Train 9. 3 gallons Tub No. 614 Date 8–27 No. 2566." (On tub) "Graham Ice Cream Co., Graham, Va."

Analysis of a sample of the product in the first shipment by the Bureau of Chemistry of this department, showed the following results:

| | |
|---|---|
| Fat (per cent) | 6.03 |
| Total solids (per cent) | 26.11 |

Gelatin: Strong test.

Bacteriological examination showed 224,000,000 organisms per cc, plain agar, after 3 days at 25° C.; 146,000,000 organisms per cc litmus lactose agar, after 3 days at 25° C.; 1,000,000 *B. coli* group per cc; 1,000,000 streptococci. Bacteriological examination of a sample from the second shipment, by said Bureau of Chemistry, showed the following results: 200,000,000 organisms per cc, plain agar at 25° C.; 250,000,000 organisms per cc, litmus lactose agar at 25° C.; 10,000,000 *B coli* group per cc; 10,000,000 streptococci per cc.

Adulteration of the product was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and putrid animal and vegetable substance.

On August 15, 1913, the defendant entered a plea of guilty to the information, and the court imposed a fine of $50.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *June 20, 1914.*

**3317. Misbranding of sorghum compo. U. S. v. 100 Cases, More or Less, of So-called Sorghum Compo. Order releasing the product on bond.** (F. & D. No. 5120. S. No. 1744.)

On or about April 1, 1913, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cases of so-called sorghum compo, remaining unsold in the original unbroken packages and in possession of the Lehmann-Higginson Grocery Co., Wichita, Kans., alleging that the product had been shipped on or about November 21, 1912, by the J. C. Hubinger Bros. Co., Keokuk, Iowa, and transported from the State of Iowa into the State of Kansas, and charging misbranding in violation of the Food and Drugs Act. Fifty of the cases were labeled: "12 Cans 5 lbs. Always Good Sorghum Compo. Lehmann Higginson Gro. Co., Wichita, Kansas. B. 709–11–19–12." The cans in all the cases were labeled: "6 Cans 10 lbs. Always Good Sorghum Compo. Lehmann Higginson Gro. Co., Wichita, Kansas. B. 709–11–19–12." The remaining cases were labeled: "24 Cans 2 lbs. Always Good Sorghum Compo. Lehmann Higginson Gro. Co., Wichita, Kansas. B. 709–11–19–12." The cans in all the cases were labeled: "Always Good Brand Sorghum Compo. Always good brand. Distributed by Lehmann Higginson Gro. Co., Wichita, Kans." (In small letters) "Corn Syrup 85%, molasses 15%."

Misbranding was alleged in the libel for the reason that the product was not a sorghum compound as expressed upon the label thereon, but was a mixture of glucose and molasses, in which the constituent glucose predominated, and was further misbranded in that no sorghum sirup appeared to be present in said mixture; and further that said label was false and misleading in that it led the consumer to believe that said sorghum compo was composed of sorghum sirup and molasses, when, in truth and in fact, it was composed of glucose and molasses, with the constituent glucose predominating, and did not contain sorghum sirup as indicated and recited by said label.

On April 14, 1913, the said Lehmann-Higginson Grocery Co., claimant, having filed its claim and moved the court for an order releasing the product, it was ordered by the court that the product should be released to said claimant upon payment of the costs of the proceedings and execution of bond in the sum of $500, in conformity with section 10 of the act. It was further ordered that the product should be relabeled in conformity with the analysis thereof by the Department of Agriculture, and that all other labels and marks on the containers of the product should be obliterated and canceled.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *June 20, 1914.*

**3318. Adulteration and misbranding of stock feed. U. S. v. 40 Sacks of Dairy Feed, 60 Sacks of Sweet Feed, and 240 Sacks of Molasses Feed. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5183. S. No. 1787.)

On April 28, 1913, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 40 sacks of dairy feed, 60 sacks of sweet feed, and 240 sacks of molasses feed, each sack containing approximately 100 pounds, remaining unsold in the original unbroken packages and in possession of the Interstate Brokerage Co., Quitman, Ga., alleging that the product had been shipped on or about March 29, 1913, by the Ozark Feed Co., Neosho, Mo., and transported from the State of Missouri into the State of Georgia, and charging adulteration

and misbranding in violation of the Food and Drugs Act. The dairy feed was labeled: (On sasks) "100 Lbs. Neozark Dairy Feed. Ozark Feed Co., Neosho, Mo." (On tags) "Neozark Dairy Feed; Guaranteed Analysis: Crude Fat 3 per cent, Crude Protein 12 per cent, Crude Fibre 10 per cent, Carbohydrates 53 per cent; contains corn meal, wheat bran, alfalfa, and molasses; Ozark Feed Co., Neosho, Mo." The sweet feed was labeled: (On sacks) "100 lbs. Neozark Sweet Feed. Corn, oats, alfalfa, molasses, salt. A strictly high grade feed; Ozark Feed Co., Neosho, Mo." (On tags) "Neozark Sweet Feed; average guaranteed analysis, Crude Fat 3 per cent, Crude Protein 11 per cent, Crude Fibre 12 per cent, Carbohydrates 55 per cent; contains corn, oats, alfalfa, molasses;—Ozark Feed Co., Neosho, Mo." The molasses feed was labeled: (On sacks) "100 lbs. Neozark Molasses Feed.—Corn, oats, alfalfa, corn bran, recleaned screenings, salt, and molasses; a well balanced ration; Ozark Feed Co., Neosho, Mo." (On tags) "Neozark Molasses Feed—average guaranteed analysis—Crude Fat 3 per cent, Crude Protein 11 per cent, Crude Fibre 13 per cent, Carbohydrates 52 per cent; made from alfalfa, molasses, corn, oats, corn bran, salt. Ozark Feed Co., Neosho, Mo."

Adulteration of the dairy feed was alleged in the libel for the reason that it was mixed with weed seed, whole, broken, and smutty wheat grains, oats in the form of screenings, so as to reduce, lower, and injuriously affect the quality and strength of said feed. Adulteration of the sweet feed was alleged for the reason that it was mixed with weed seeds and broken and shriveled wheat in the form of screenings which had been added to and mixed with said feed so as to reduce, lower, and injuriously affect its quality and strength. Misbranding of the dairy feed was alleged for the reason that it was branded to contain 3 per cent of fat and 12 per cent of protein, when, in truth and in fact, it contained a less amount of said products, and because such labels purported to announce the constituents of said feed when there were present cracked corn, weed seed, wheat, and oats not declared upon said labels. Misbranding of the sweet feed was alleged for the reason that it was labeled to contain 3 per cent of fat, when, in truth and in fact, it contained a less amount of said product, and because said labels purported to announce the constituents of said feed, when in fact said feed contained weed seed and broken and shriveled wheat not declared upon the said labels. Misbranding of the molasses feed was alleged because same was labeled to contain 3 per cent of fat and 11 per cent of protein, when, in truth and in fact, it contained a smaller amount of each of said products.

On February 12, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *June 20, 1914.*

**3319. Adulteration of tomato pulp. U. S. v. 25 Cases, More or Less, of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5228. S. No. 1815.)

On May 19, 1913, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 cases, more or less, each containing 4 dozen cans of tomato pulp, remaining unsold in original unbroken packages, in possession of V. A. Savarese, Brooklyn, N. Y., alleging that the product had been shipped on or about May 6, 1913, by William P. Andrews, Wingate's Point, Md., and transported from the State of Maryland into the State of New York, and charging

adulteration in violation of the Food and Drugs Act. The product was labeled: "Wind Mill Brand tomato pulp made from tomatoes and fresh tomato trimmings with great care Packed by Wm. P. Andrews, Crapo, Md."

Adulteration of the product was alleged in the libel for the reason that it consisted wholly or in part of a filthy, putrid, and decomposed vegetable substance.

On August 19, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. Galloway, *Acting Secretary of Agriculture.*

Washington, D. C., *June 20, 1914.*

**3320. Adulteration of ferro-china bitters. U. S. v. 20 Bottles of Ferro-China Bitters. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5278, I. S. No. 3622-h. S. No. 1867.)

On July 17, 1913, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 24 bottles, each containing about 32 fluid ounces of a product purporting to be Bisleri's ferro-china bitters, 20 of which remained unsold and in the original unbroken packages and in possession of Matteo D'Agostino, Atlantic City, N. J., alleging that the product had been shipped on or about June 26, 1913, by Henry Polinsky & Co., Philadelphia, Pa., and transported from the State of Pennsylvania into the State of New Jersey, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the libel for the reason that it contained an added poisonous and added deleterious ingredient, to wit, methyl alcohol, which might render such article injurious to health.

On February 10, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 8, 1914.*

**3321. Adulteration of sugar wafers. U. S. v. 32 Cans, More or Less, of Sugar Wafers. Consent decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5328. I. S. No. 915-h. S. No. 1914.)

On September 6, 1913, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 32 cans, more or less, each containing approximately 13 pounds of sugar wafers, remaining unsold in the original unbroken packages and in possession of the F. W. Woolworth Co., Cincinnati, Ohio, alleging that the product had been transported in interstate commerce from the State of New York into the State of Ohio, and charging adulteration in violation of the Food and Drugs Act. The product bore no label of any character except the letters and figures "W H 20," marked on the outside of the packages.

Adulteration of the product was alleged in the libel for the reason that a certain substance, to wit, mineral oil, an inert substance having no food value, had been mixed and packed with said article of food and food product so as to injuriously affect the quality and strength thereof.

On January 5, 1914, the said F. W. Woolworth Co. having filed its answer to the libel, setting up that the product had been received by it from the Excel-

sior Wafer Co., New York, N. Y., and the Leonard Products Co., Brooklyn, N. Y., and admitting the allegations of the libel and consenting to a decree, but denying that the wafers were adulterated with its knowledge or consent, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal, and that the costs of the proceedings should be paid by the said F. W. Woolworth Co.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 8, 1914.*

**3322. Adulteration and misbranding of oil of birch. U. S. v. 9 Packages, etc., of Oil of Birch. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5404. I. S. No. 139–h. S. No. 1993.)

On November 6, 1913, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said District a libel for the seizure and condemnation of 9 packages, containing approximately 468–3/4 pounds of a product purporting to be oil of birch, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about October 18, 1913, by J. B. Johnson, Hickory, N. C., and transported from the State of North Carolina into the State of New York, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product bore no marks or labels except the name and address of the consignee and express data, but was invoiced as birch oil.

Adulteration of the product was alleged in the libel for the reason that it was offered for sale as oil of birch, when, in fact, said product consisted largely of methyl salicylate, which was substituted for the pure oil. Misbranding was alleged for the reason that said product was offered for sale and invoiced by the shipper thereof as birch oil, whereas, in truth and in fact, the said product consisted largely of methyl salicylate, which was substituted for the pure oil.

On February 18, 1914, the said James B. Johnson, claimant, having filed his claim and stipulation for costs and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be redelivered to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $750, in conformity with section 10 of the act, one of the conditions of said bond being that the product should be relabeled in conformity with the Food and Drugs Act.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 8, 1914.*

**3323. Misbranding of oil of wintergreen. U. S. v. 2 Cans of Oil of Wintergreen. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5475. I. S. No. 3820–h. S. No. 2009.)

On December 15, 1913, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 cans of a product called oil of wintergreen, remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped by Frank P. Dowe, Spring Glen, N. Y., and transported from the State of New York into the State of Massachusetts, and charging misbranding in violation of the Food and Drugs Act. The containers were

labeled in part: "Oil Wintergreen Leaf F. P. Dowe, Spring Glen, Ulster Co., N. Y." The tags on the containers were labeled in part: "From Frank P. Dowe, Distiller of Pure Oil Wintergreen from the Leaf Extract of Witch Hazel, Spring Glen, Ulster Co., N. Y."

Misbranding of the product was alleged in the libel for the reason that the package and label which contained said drug bore statements, designs, and devices regarding said drug, that is to say, the words "Oil Wintergreen Leaf" and "From Frank P. Dowe, Distiller of Pure Oil Wintergreen From the Leaf Extract of Witch Hazel," which said statements, designs, and devices were false and misleading, in that said words would lead the purchaser to believe that said drug consisted wholly of oil of wintergreen, whereas, in truth and in fact, said drug contained less than 25 per cent of said oil of wintergreen. Misbranding was alleged for the further reason that the product was an imitation of and offered for sale under the name of "Oil of Wintergreen," whereas, in truth and in fact, it was not oil of wintergreen.

On February 18, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 8, 1914.*

**3324. Adulteration of tomato catsup. U. S. v. 5 Barrels of Tomato Catsup. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5562. I. S. No. 1364-h. S. No. 2098.)

On January 29, 1914, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 5 barrels of tomato catsup, remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped by the Crine Packing and Seed Co., Morganville, N. J., and transported from the State of New Jersey into the State of Massachusetts, and charging adulteration in violation of the Food and Drugs Act. The product was labeled in part: "⅕ of one per cent benzoate of soda. Bonny Best Tomato Catsup. Packed by the R. N. Crine Seed Co., Morganville, N. J."

Adulteration was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On February 18, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 8, 1914.*

**3325. Adulteration of milk. U. S. v. Robert N. Rust. Plea of guilty. Fine, $10.** (F. & D. No. 221-c.)

On February 27, 1914, the United States attorney for the District of Columbia, acting upon a report by the Health Officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Robert N. Rust, Alexandria, Va., alleging shipment by said defendant, in violation of the Food and Drugs Act, on February 12 and 13, 1914, from the State of Virginia into the District of Columbia, of quantities of milk which was adulterated.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, water, had been packed and mixed with it, which reduced and lowered its quality and strength.

On February 27, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 14, 1914.*

**3326. Adulteration of cheese. U. S. v. 115 Boxes of Cheese. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 222–c.)

On February 16, 1914, the United States attorney for the district of Porto Rico filed in the District Court of the United States for said District a libel for the seizure and condemnation of 115 boxes of American cheese remaining unsold in the original unbroken packages at San Juan, Porto Rico, alleging that the product had been transported from the State of New York into the Island of Porto Rico, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Stow away from boilers. Condado brand cheese. V. M. y C. R. San Juan."

Adulteration of the product was alleged in the libel for the reason that the cheese consisted in whole or in part of filthy, decomposed, and putrid animal and vegetable substance, rendering said cheese unfit for human consumption.

On March 6, 1914, no claimant having appeared for the property, and testimony having been introduced by the United States to sustain the allegations of the libel, judgment of condemnation and forfeiture was rendered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 14, 1914.*

**3327. Adulteration and misbranding of peanut oil. U. S. v. 4,400 Cans, 5,500 Cans, and 4,652 Cans of Peanut Oil. Default decrees of condemnation, forfeiture, and destruction.** (F. & D. Nos. 223–c, 224–c, 225–c.)

On February 16, 1914, the United States attorney for the District of Porto Rico, filed in the District Court of the United States for said district libels for the seizure and condemnation of 4,400 cans, 5,500 cans, and 4,652 cans of peanut oil, remaining unsold in the original unbroken packages at Mayaguez and San Juan, Porto Rico, alleging that the product had been transported from Genoa, Italy, into Porto Rico, and charging adulteration and misbranding in violation of the Food and Drugs Act. The 4,400 cans were labeled: "Peanut Oil Manufactured by Pio Moro fu Tomaso, Genoa, Italy. Imported by M. Grau e Hijos, Mayaguez, P. R." The 5,500 cans were labeled: "Peanut Oil Manufactured by Pio Moro fu Tomaso, Genoa, Italy. Imported by F. Carrera & Ho. Mayaguez, P. R." The 4,652 cans were labeled: "Aceite Mani."

Adulteration of the product was alleged in the libels for the reason that a substance known as nitrobenzine had been mixed and packed with said peanut oil so as to reduce and lower and injuriously affect its quality and strength, in this respect, among others, namely, in that by the treatment aforesaid the said peanut oil had been caused to contain added poisonous or other added deleterious ingredients, to wit, nitrobenzine, which might render said peanut oil injurious to health; and further in that by the treatment aforesaid nitrobenzine had been substituted wholly or in part for said peanut oil; and further in that by the treatment aforesaid a substance had been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; and further for the reason that the peanut oil treated by the process as aforesaid was of a grade inferior to pure peanut oil and thereby adulterated in that

said inferiority of said peanut oil was concealed. Misbranding was alleged in the libels for the reason that the product was labeled variously as aforesaid, and that, in truth and in fact, peanut oil is known and recognized to be the oil of the peanut and consists only of the pure oil of the peanut, while the peanut oil contained in the cans aforesaid was not pure peanut oil, but was a grade of oil inferior to pure peanut, being a mixture of pure peanut oil together with nitrobenzine, and that this mixture was labeled as aforesaid so as to deceive and mislead the purchaser or purchasers thereof in that the labels on said cans represented and purported the contents thereof to be pure peanut oil, whereas, in truth and in fact, said peanut oil was not a pure peanut oil but contained an added ingredient deleterious and detrimental to health, to wit, nitrobenzine, and thereby the labels on said cans were false and misleading in this particular. Misbranding was alleged for the further reason that the cans containing the peanut oil were labeled variously as aforesaid and the peanut oil in said cans was not a pure peanut oil, but, in truth and in fact, the said cans purported to contain pure peanut oil and the statements on said cans were so arranged as to cause the purchaser or purchasers thereof to believe that the said cans contained pure peanut oil, and the peanut oil contained in said cans was not a pure peanut oil but was of a grade and quality of peanut oil inferior to pure peanut oil, being a mixture of peanut oil and nitrobenzine, and that this mixture labeled as aforesaid was sold under the distinctive name of another article than itself, to wit, peanut oil, and was labeled as aforesaid so as to deceive and mislead the purchaser in the respect that it purported to be a pure peanut oil, whereas, in truth and in fact, it was not a pure peanut oil, but contained an added ingredient deleterious and detrimental to health, to wit, nitrobenzine, and therefore was sold under the distinctive name of another article than itself, and misbranded within the intent and meaning of the act of Congress.

On March 6, 1914, no claimant having appeared for the property, and testimony having been introduced by the United States to sustain the allegations of the libels, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 14, 1914.*

**3328. Misbranding of Paxton's brand sweet oil, Paxton's brand strawberry flavor, Paxton's brand raspberry flavor, Paxton's brand pineapple flavor, Polk's extract pineapple, Polk's extract raspberry, and Fassett's lemon flavor; and adulteration of Paxton's brand orange flavor, Paxton's brand lemon flavor, Stuart's brand lemon flavor, Andrews' brand lemon flavor, and Trojan seal lemon flavor. U. S. v. Polk & Calder Drug Company. Plea of guilty. Fine, $50.** (F. & D. No. 2034. I. S. Nos. 1051-c, 1052-c, 1053-c, 1054-c, 1055-c, 1057-c, 1062-c, 1063-c, 1066-c, 1072-c, 1073-c, 1075-c.)

On April 2, 1912, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Polk & Calder Drug Co., a corporation, Troy, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on or about July 8, 1910, from the State of New York into the State of Massachusetts:

(1) Of 7 different articles of food which were misbranded. These products were marked for purposes of identification and were labeled as follows:

I. S. 1051–c: "Paxton's Brand Sweet Oil (Guaranty Legend, Serial No. 313) Polk & Calder Drug Co., 169–175 River St., Troy, N. Y."

I. S. 1052–c: "Paxton's Brand Flavorings Strawberry Flavor from fruit. This preparation contains 25% Alcohol (Guaranty Legend, Serial No. 313) For Flavoring Ice Cream, Custard, Jelly, Cake, Pastry, etc., Prepared by Polk & Calder Drug Co. Manf'g. Pharmacists, Troy, N. Y."

I. S. 1053–c: "Paxton's Brand Flavorings Raspberry Flavor from Fruit. This preparation contains 25% Alcohol (Guaranty Legend, Serial No. 313) * * * Prepared by Polk & Calder Drug Co., Manf'g. Pharmacists, Troy, N. Y."

I. S. 1054–c. "Paxton's Brand Flavorings Pineapple Flavor from Fruit. This preparation contains 25% Alcohol (Guaranty Legend, Serial No. 313) * * * Prepared by Polk & Calder Drug Co., Manf'g. Pharmacists, Troy, N. Y."

I. S. 1072–c: (On carton) "Polk's Surpassing Extract Pineapple Made according to the standard recommended by the United States Pharmacopoeia (Guaranty Legend, Serial No. 313) P. & C. Co. True to name. Manufactured by Polk & Calder Co., Troy, N. Y." (On bottle) "Pure concentrated Extract Pineapple Prepared by John A. Robinson & Co., Inc. Wholesale Druggists, Troy, N. Y."

I. S. 1073–c: (On carton) "Polk's Surpassing Extract Raspberry Made according to the standard recommended by the United States Pharmacopoeia (Guaranty Legend, Serial No. 313) P. & C. Co. True to name. Manufactured by Polk & Calder Co., Troy, N. Y." (On bottle) "Polk's Extract of Raspberry From Fruit. This Extract contains 43% Alcohol (Guaranty Legend, Serial No. 313) Prepared by the Polk & Calder Co., Mfg. Pharmacists, Troy, N. Y."

I. S. 1075–c: "Fassett's Lemon Flavor—Concentrated. For Soda Water Syrup (Guaranty Legend, Serial No. 313) * * * Prepared by the Polk & Calder Co., Manufacturing Pharmacists, Troy, N. Y."

Analyses of samples of these products by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| I. S. No. 1051–c: | |
| Index refraction at 25° C | 1.4715 |
| Iodin number | 110 |
| Sesame oil: None. | |
| Cottonseed oil: Present. | |
| I. S. No. 1052–c: | |
| Esters (as ethyl acetate) (per cent by volume) | 0.114 |
| Ash (grams per 100 cc) | 0.063 |
| Alkalinity of ash (cc N/10 acid per 100 cc) | 4.5 |
| Alcohol (per cent) | 22.9 |
| Methyl alcohol: None. | |
| Color: Archil or similar color. | |
| Volatile esters (per cent) | 0.029 |
| I. S. No. 1053–c: | |
| Esters (as ethyl acetate) (per cent by volume) | 0.177 |
| Ash (grams per 100 cc) | 0.051 |
| Alkalinity of ash (cc N/10 acid per 100 cc) | 4.0 |
| Alcohol (per cent by volume) | 21.47 |
| Methyl alcohol: None. | |
| Color: Archil or similar color. | |
| Volatile esters (per cent) | 0.028 |

I. S. No. 1054–c:

| | |
|---|---|
| Esters (as ethyl acetate) (per cent by volume) | 0.182 |
| Ash (grams per 100 cc) | 0.031 |
| Alkalinity of ash (cc N/10 acid per 100 cc) | 5.0 |
| Alcohol (per cent by volume) | 21.97 |
| Methyl alcohol: None. | |
| Color: None. | |
| Volatile esters (per cent) | 0.089 |

I. S. No. 1072–c:

| | |
|---|---|
| Esters (as ethyl acetate) (per cent by volume) | 0.309 |
| Ash (grams per 100 cc) | 0.026 |
| Alkalinity of ash (cc N/10 acid per 100 cc) | 3.5 |
| Alcohol (per cent by volume) | 42.66 |
| Methyl alcohol: None. | |
| Color: Natural. | |
| Volatile esters (per cent) | 0.051 |

I. S. No. 1073–c:

| | |
|---|---|
| Esters (as ethyl acetate) (per cent by volume) | 0.192 |
| Ash (grams per 100 cc) | 0.076 |
| Alkalinity of ash (cc N/10 acid per 100 cc) | 3.5 |
| Alcohol (per cent by volume) | 47.89 |
| Methyl alcohol: None. | |
| Color: Archil or similar color. | |
| Volatile esters (per cent) | 0.06 |

I. S. No. 1075–c:

| | |
|---|---|
| Specific gravity | 0.9014 |
| Lemon oil by precipitation (per cent) | 0.8 |
| Polarization, 20° C. (°V.) | 2.8 |
| Lemon oil by polarization (per cent) | 0.82 |
| Alcohol (per cent) | 54.75 |
| Methyl alcohol: None. | |
| Refractive index of oil | 1.4746 |
| Citral (per cent) | 0.11 |
| Color: Naphthol Yellow S. | |

Misbranding of the products was alleged in the information for the reason that the labels and thereby the representations and statements thereon contained were false and misleading and intended and calculated by the said defendant, the Polk & Calder Drug Co., unlawfully and knowingly to deceive and mislead the purchasers of said articles of food in the following particulars, to wit:

The said article of food identified herein as I. S. 1051–c, above mentioned, was misbranded in that, whereas the same was represented by the defendant herein to be sweet oil, the same was not then and there sweet oil, so-called, and contained no sesame oil,[1] but, on the contrary, contained a certain proportion of cottonseed oil.

The said article of food identified herein as I. S. 1052–c, above mentioned, was misbranded in that, whereas the said article of food was represented by the defendant by the label aforesaid to be a strawberry flavoring extract made from the fruit, in truth and in fact, the said article of food was not then and there a strawberry flavoring extract made from the fruit of the strawberry but [consisted of imitation extract which (?)] contained esters, ash, alcohol, methyl alcohol, artificial coloring, and volatile esters.

[1] It is not the view of this department that sweet oil should contain sesame oil.

The said article of food identified herein as I. S. 1053–c, above mentioned, was misbranded in that, whereas the said article of food was represented by the defendant by the label aforesaid to be a raspberry flavoring extract made from the fruit, in truth and in fact, the said article of food was not then and there a raspberry flavoring extract made from the fruit of the raspberry but the same consisted of [imitation extract containing (?)] esters, ash, alcohol, methyl alcohol, artificial coloring matter, and volatile esters.

The said article of food identified herein as I. S. 1054–c, above mentioned, was misbranded in that, whereas the said article of food was represented by the defendant herein by the label aforesaid to be a pineapple flavoring extract made from the pineapple fruit, in truth and in fact, the said article of food was not then and there a pineapple flavoring extract made from the pineapple fruit but consisted of [imitation extract containing (?)] esters, ash, alcohol, methyl alcohol, artificial coloring matters, and volatile esters. [It will be noted from the analysis that this product contained no coloring matter.]

The said article of food identified as I. S. 1072–c, above mentioned, was misbranded in that, whereas the said article of food was represented by the defendant herein by means of the label aforesaid to be an extract of pineapple fruit, in truth and in fact, the same was not an extract of pineapple fruit but consisted of [imitation extract containing (?)] esters, ash, alcohol, methyl alcohol, artificial coloring matter, and volatile esters. [It will be noted from the analysis that the color of this product was natural.]

The said article of food identified herein as I. S. 1073–c, above mentioned, was misbranded in that, whereas the said article of food was represented by the defendant herein by means of the label aforesaid to be an extract of raspberry fruit, in truth and in fact, the same was not an extract of raspberry fruit but consisted of [imitation extract containing (?)] esters, ash, alcohol, methyl alcohol, artificial coloring matter, and volatile esters.

And the said article of food identified herein as I. S. 1075–c, above mentioned, was misbranded in that, whereas the said article of food was represented by the defendant herein to be a lemon flavoring extract [in truth and in fact, the same was not a lemon flavoring extract (?)] but consisted of [imitation extract containing (?)] alcohol, methyl alcohol, artificial coloring matter, and only a small trace of pure lemon oil.

[While it was alleged in the information that the foregoing extracts contained methyl alcohol, it will be noted from the analyses that none of them contained methyl alcohol.]

(2) Of 4 brands of flavors and 1 extract which were adulterated. These products were labeled and marked for purposes of identification as follows:

I. S. 1055–c: "Paxton's Brand Flavorings Orange Flavor (Guaranty Legend, Serial No. 313) * * * Formula: Oil Orange, Ethyl Alcohol, Water pure, and Curcuma for coloring, Prepared by the Polk & Calder Drug Co., Troy, N. Y."

I. S. 1057–c: (Light-colored sample) "Paxton's Brand Flavorings Lemon Flavor (Guaranty Legend, Serial No. 313) * * * Formula: Oil Lemon, Ethyl Alcohol, Water pure, and Curcuma for coloring. Prepared by the Polk & Calder Drug Co., Troy, N. Y." (Dark-colored sample) "Paxton's Brand Flavorings Lemon Flavor (Guaranty Legend, Serial No. 313) * * * Formula: Oil Lemon, Citral, Ethyl Alcohol, Water pure, and is artificially colored. Prepared by Polk & Calder Drug Co., Mfg. Pharmacists, Troy, N. Y."

I. S. 1062–c: "Stuart's Brand Lemon Flavor. Guaranteed by the Polk & Calder Co. under the Food and Drugs Act, June 30, 1906, Guaranty No. 313. A carefully prepared flavoring from pure oil of lemon with Curcuma for coloring. Manufactured by Polk & Calder Co., Mfg. Chemists, Troy, N. Y."

I. S. 1063–c: "Andrews' Brand Lemon Flavor Guaranteed under the Food and Drugs Act, June 30, 1906. No. 313. A carefully prepared flavoring from pure oil of lemon, with Curcuma for coloring. Manufactured by Polk & Calder Drug Co., Mfg. Chemists, Troy, N. Y."

I. S. 1066–c: "Trojan Seal Extracts. Lemon Flavor * * * Polk & Calder Drug Co., Importers and wholesale Druggists. 171–173–175 River St., Troy, N. Y."

Analyses of samples of the products by said Bureau of Chemistry showed the following results:

I. S. No. 1055–c:

| | |
|---|---|
| Specific gravity | 0.9416 |
| Orange oil by precipitation: None. | |
| Polarization, 20° C. (°V.) | 0.0 |
| Color: Coal tar dye. | |
| Alcohol (per cent) | 46.95 |
| Methyl alcohol: None. | |
| Citral: Trace. | |

I. S. 1057–c:

| | |
|---|---|
| Lemon oil by precipitation (per cent): None. | |
| Polarization, 20° C. (°V.) | 0.0 |
| Specific gravity | 0.9713 |
| Alcohol (per cent) | 24.95 |
| Methyl alcohol: None. | |
| Citral (per cent) | 0.17 |
| Color: Slightly colored with Naphthol Yellow S. | |
| Turmeric: None. | |

I. S. 1062–c:

| | |
|---|---|
| Specific gravity | 0.9373 |
| Lemon oil by precipitation: None. | |
| Polarization, 20° C. (°V.) | 0.0 |
| Alcohol (per cent) | 48.7 |
| Methyl alcohol: None. | |
| Citral: Trace. | |
| Color: Naphthol Yellow S. | |

I. S. 1063–c:

| | |
|---|---|
| Specific gravity | 0.9370 |
| Lemon oil by precipitation: None. | |
| Polarization, 20° C. (°V.) | 0.0 |
| Alcohol (per cent) | 49.37 |
| Methyl alcohol: None. | |
| Citral: Trace. | |
| Color: Naphthol Yellow S. | |

I. S. 1066–c:

| | |
|---|---|
| Specific gravity | 0.9363 |
| Lemon oil by precipitation: None. | |
| Polarization, 20° C. (°V.) | 0.0 |
| Alcohol (per cent) | 48.95 |

I. S. 1066–c—Continued.

Methyl alcohol: None.
Citral: Trace.
Color: Naphthol Yellow S.

It was alleged in the information that these products were adulterated in the following particulars, that is to say, that, whereas the said article of food to which was attached the label hereinbefore mentioned and referred to as I. S. 1055–c was declared by the defendant, by means of the printed words contained upon said label, to be an orange flavoring made from the [juice or (?)] oil of the orange and curcuma for coloring, in truth and in fact, the said article of food contained no orange oil and, further, that said article of food contained no curcuma, but, in truth and in fact, contained coal tar dye for coloring matter instead of curcuma; and, further, that, whereas the said article of food to which was attached [the label hereinbefore mentioned (?)] and referred to as I. S. 1057–c was declared by the said defendant, by means of the printed words contained upon said label, to be a lemon flavoring made from lemon oil and containing curcuma for coloring matter, in truth and in fact, the said article of food contained no lemon oil and no curcuma for coloring matter but contained coal tar dye for coloring matter; and, further, that, whereas the said article of food to which was attached the label hereinbefore mentioned and described as I. S. 1062–c was declared by the said defendant, by means of the printed words contained upon said label, to be a flavoring made and prepared from the pure oil of lemon with curcuma for coloring matter, in truth and in fact, the said article of food contained no oil of lemon nor did it contain any curcuma, but did contain coal tar dye for coloring matter; and, further, that, whereas the said article of food to which was attached the label hereinbefore mentioned and described as I. S. 1063–c was declared by the said defendant, by means of the printed words contained upon said label, to be a lemon flavoring made and prepared from the pure oil of lemon with curcuma for coloring matter, in truth and in fact, said article of food contained no lemon oil nor was the said article of food made or prepared from the pure oil of lemon nor did it then and there contain any curcuma but did contain coal tar dye for coloring matter; and, further, that, whereas the said article of food to which was attached the label hereinbefore mentioned and described as I. S. 1066–c was declared by the said defendant, by means of the printed words contained upon said label, to be a lemon flavor, in truth and in fact, the same was not a lemon flavor, nor did it contain any oil of lemon, and all of said articles of food respectively were adulterated in that the certain substances as aforesaid were substituted wholly or in part for the said articles of food as above set forth and the same were colored in the manner as above set forth, whereby the said articles of food were damaged and their inferiority concealed from the purchasers thereof.

On May 2, 1912, the defendant company withdrew its plea of not guilty formerly entered and entered a plea of guilty to the information, and the court thereupon imposed a fine of $50.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 14, 1914.*

**3329. Misbranding of fruit puddine. U. S. v. 150 Cases of a Product Purporting to be Fruit Puddine. Tried to the court. Judgment for libelant. Decree of condemnation, forfeiture, and destruction. (F. & D. No. 2818. I. S. No. 104–d. S. No. 1010.)**

On July 22, 1911, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District

Court of the United States for said district a libel for the seizure and condemnation of 150 cases, each containing an article of food, to wit, a product purporting to be fruit puddine, remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been transported from the State of Maryland into the State of Massachusetts, and charging misbranding in violation of the Food and Drugs Act.

It was alleged in the libel that the food contained in the cases was misbranded in that said food was labeled and branded in part as follows: That is to say, certain of the retail packages in each of the cases were branded in substance as follows: "Fruit flavored puddine; trade mark registered, rose vanilla, Fruit Puddine Company, Baltimore, Maryland, U. S. A.," and certain other retail packages in the cases were labeled in substance as follows: "Fruit flavored puddine; trade mark registered, cream vanilla, Fruit Puddine Company, Baltimore, Maryland, U. S. A.," and each of the several cartons in each of the aforesaid 150 cases, into which cartons the said food was packed, was labeled in substance as follows: "A mixture; the flavorings and colors used in the mixture fruit puddine are pure and harmless and are guaranteed by the Fruit Puddine Company to comply with the Pure Food and Drugs Act under Serial No. 4167." which aforesaid brands and labels would deceive and mislead the purchaser to believe that the vanilla used in the preparation of said foods was true vanilla flavoring, whereas, in truth and in fact, said foods contained no true vanilla flavoring, but, instead thereof, an artificial vanilla was used; and, moreover, which said brands and labels would deceive and mislead the purchaser to believe that fruit or natural flavoring ingredients entered into the composition of said foods, whereas, in truth and in fact, no fruit or natural flavoring ingredients entered into the composition of said foods, but, instead thereof, artificial flavors were employed.

On August 8, 1911, the Fruit Puddine Co., Baltimore, Md., filed their claim. On January 17, 1913, the case came on to be heard before the court without the intervention of a jury, and on January 17, 1914, a judgment favorable to the Government was made, as will more fully appear from the following opinion by the court (Morton, *J.*):

This is a proceeding, under the Food and Drugs Act, by information (or libel) against 150 cases of a food product called "Puddine" or "Fruit Puddine." A jury having been waived by both parties, the case was tried before me upon fact and law. I find the material facts, in addition to those alleged in the information and admitted in the answer, to be as follows:

"Puddine" or "Fruit Puddine" is the distinctive name adopted and used as early as 1889 of a proprietary food product consisting largely of corn-starch. It is manufactured by the claimant and is put up in packages or cartons of different flavors, adapted to the retail trade. It does not contain any deleterious or poisonous ingredient. It is not an imitation of, or offered for sale under the distinctive name of, any other article; and the name "Puddine" or "Fruit Puddine" is accompanied, on the same label or carton, with a true statement of the place where it has been manufactured.

The alleged misbrandings lie in the words "Cream Vanilla," "Rose Vanilla," and "Fruit Flavored," which appear upon the cartons. "Cream Vanilla" and "Rose Vanilla" are two of the many flavors in which Puddine is manufactured. All the cartons in question appear to have been marked "Fruit Flavored Puddine," to which is added on some cartons "Cream Vanilla," and on others "Rose Vanilla," according to the flavor of the Puddine therein.

The plaintiff contends that branding any article of food with the word "vanilla," alone or in combination with other words, is a representation that

it is flavored with vegetable extract of vanilla made from the vanilla bean; that the word "cream" prefixed to the word "vanilla" means the best or highest grade of vanilla; that the words "Cream Vanilla" on the claimant's cartons mean "Flavored with the highest grade of vegetable extract of vanilla"; that the word "rose" prefixed to the word "vanilla" means a combination of the vegetable flavors of rose and vanilla; that the words "Rose Vanilla" on the claimant's cartons mean "Flavored with the vegetable extracts of rose and of vanilla"; and that the words "fruit flavored" mean flavored with fruits (commonly so-called), capable of being used as flavoring substances.

The contention of the claimants, who are the manufacturers of the product, is that "Puddine" and "Fruit Puddine" are artificial words, adopted as the name of their product, and constitute a distinctive name for the article within section 8, subsection 4 (1), of the act in question; that "Cream Vanilla" and "Rose Vanilla" are also artificial words, adopted by them to indicate the taste and appearance of their product, and import nothing as to the origin of the taste; that they are not false or misleading and that the term "fruit" or "fruit flavored," while adopted as an arbitrary or artificial part of the name, is in fact true, because the grain out of which the product is manufactured is—botanically speaking—a fruit.

The words in question are to be construed in their ordinary or customary meaning, so far as they have one. U. S. *v.* Seventy-five Boxes of Pepper, 198 F. R. 934; U. S. *v.* Thirty Cases of Grenadine, 199 F. R. 932; Brina *v.* U. S., 105 C. C. A. 558.

The distinctive or trade name of the product is "Puddine" or "Fruit Puddine," always accompanied on the cartons by words indicating the flavor. "Puddine" and "Fruit Puddine" are frequently used without the adjective "fruit flavored," which is not part of the name. It seems clear that "fruit flavored" does signify, as the plaintiff contends, that the article is flavored with "fruit" in the common, not the botanical meaning of the word. As no such fruit is used in "Puddine," the words "fruit flavored" are untrue and misleading as applied to it; and the misleading effect of them is heightened by the picture of a dish of fruit which appears on some of the cartons. If Puddine were not an article of food known under its own distinctive name, it would clearly be "misbranded" within the act, by reason of the words "Fruit Flavored" upon the cartons.

The claimant contends, however, that articles of food which come within the terms of the proviso to the fourth subsection of section 8 are exempt from the operation of the Food and Drugs Act, and are not to be deemed misbranded, no matter what misstatements are made upon the cartons. The plaintiff contends (1) that the first paragraph of section 8 prohibits all misbranding as therein defined, and is not limited by the proviso in question; and (2) that even if the proviso does apply, it is not the intent of it to except from the operation of the act anything except the distinctive name itself; that even if, as to articles of food which come within the proviso, misstatements which form part of the name itself are not forbidden, it is nevertheless true that any other false or misleading statement regarding the ingredients or substances contained in such articles, constitute misbranding.

It has been said that the sole purpose of this statute "was (1) to protect purchasers from injurious deceits by the sale of inferior for superior articles; and (2) to protect the health of the people by preventing the sale of normally wholesome articles to which have been added substances poisonous or detrimental to health." Sanborn, *J.*, Hall-Baker Co. *v.* U. S., 198 F. R. 614, at 616 (C. C. A. 8th Circuit). In other words deception and unwholesomeness are the evils which the act is designed to prevent. The last part of section 8, providing that "manufacturers of proprietary foods which contain no unwholesome added ingredients" shall not be required "to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding," plainly implies that a proprietary product may be misbranded. The report of the committee (House of Representatives, Fifty-ninth Congress, first session, Report 2118. March 7, 1906), and the debates, so far as they refer to the proviso in question, indicate that

the attention of Congress was directed to protecting thereby established distinctive or trade-names from being outlawed by the act.[1]

In U. S. *v.* Forty barrels of Coca Cola, 191 F. R. 431, 440, it was held that the proviso in question "was only intended to protect an article sold under its distinctive name from the charge of misbranding in so far as any statement or suggestion contained in the name itself is concerned." See, too, U. S. *v.* American Chicle Co., U. S. District Court, District of Oregon.

It is undoubtedly true that persons purchasing a proprietary article of food, like Puddine, get what they go for, whether all the statements on the carton are correct or not. But it is also true that the purchase of a proprietary article may well be induced by false statements concerning it upon the cartons; and it is not difficult to imagine cases in which reliance on such misstatements would work real injury to the purchaser. For example, if such an article were branded "Contains no Sugar," when in fact it did, the misbranding might induce the purchase by persons whose diet demanded the absence of sugar. Such articles are within the purview of the statute. It does not seem to me that the proviso in question was intended to except them absolutely from the provisions of the act, and to leave the manufacturers free to make misrepresentations concerning them. Such a construction is out of harmony with all the rest of the statute, and disregards one of the principal purposes of it. It seems to me that the protection afforded by the proviso is limited to the distinctive name; and as so limited, I have no doubt that the proviso applies to the first paragraph of section 8, and fully protects distinctive names from being misbranding.

I therefore find and rule that the words "Fruit Flavored" upon the cartons containing Puddine were a statement regarding such article, or the ingredients or substances contained therein, which was false or misleading and constituted misbranding within the statute.

The conclusion above reached makes it unnecessary to consider whether the use of the words "Cream Vanilla" and "Rose Vanilla" constitutes misbranding; but I infer from what was said at the argument that this is a point upon which a decision is particularly desired by the parties. I therefore proceed to find the facts and state my conclusions in reference thereto.

No such extract, flavoring matter, or combination as "rose vanilla" is known to the trade, or to the public, except in connection with the defendant's product; nor any such extract or flavoring matter as "cream vanilla," except perhaps to a limited extent in the bottling trade, in which it is sometimes used to signify a high-grade vanilla extract; but such use is not known to the public generally, and is wholly unrelated to the use by the claimant. "Cream vanilla," as applied to the claimant's product, is certainly not understood by the public as meaning "flavored with a high-grade vanilla extract." The word "rose" followed by "vanilla" was registered by the claimant in the U. S. Patent Office as a trade mark applicable to "Puddine" on the 21st of May, 1889. Both "rose vanilla" and "cream vanilla" were in use by the claimant on Puddine before the Food and Drugs Act went into effect.

Puddine is not flavored with the vegetable extract of vanilla, but with vanillin, or synthetic vanilla, which is obtained from oil of cloves. Natural vanillin is found in the vanilla bean and forms the characteristic and most im-

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[1] The legislative history of this act is as follows: The bill which, after amendment, became the Food and Drugs Act of June 30, 1906, was Senate bill 88, 59th Congress, first session. It is printed in full in the Congressional Record for that session, at page 897. It was reported favorably to the Senate December 14, 1905 (Senate Reports, vol. 1, No. 8, 59th Congress, first session), passed by the Senate February 21, 1906 (Cong. Rec., 59th Congress, first session, p. 2773), and was introduced in the House of Representatives the next day (p. 2853) and there referred to the Committee on Interstate and Foreign Commerce. The committee's report is found in House Reports, 59th Congress, first session, vol. 1, Report 2118. The committee of the House recommended amendment to the Senate bill by substituting for it the Hepburn pure food bill (H. R. 4527, reported to the House January 18, 1904, and passed by the House) as amended by the committee. The bill was passed by the House with amendments June 23, 1906 (Rec., pp. 9076, 9353), and sent back to the Senate, which refused to concur. Conference committees filed identical reports June 27, 1906, setting out in full the bill as agreed upon and recommending that it pass (House Reports, vol. 3, No. 5056; Senate Docs., vol. 8, Doc. 521; Cong. Rec., pp. 9353, 9379, 9381). The second conference report, making certain minor improvements in sections 1 and 2 of the bill, was filed June 29, 1906, giving the bill as finally enacted (House Reports, vol. 3, No. 5096). The bill was then passed and signed June 30, 1906.

As to the distinctive-name proviso: The subject matter of this proviso appeared in the original Senate bill, and the proviso as finally passed first appears in substance in the bill as amended by the House committee, where it is numbered paragraph 4 of section 7. There appears to have been no discussion at all of the "distinctive-name" proviso in the debates in the Senate, and the only allusion to it in the debates in the House is found under date of June 23, 1906 (Cong. Rec., 59th Congress, first session, p. 9068).

portant element in the vegetable extract of vanilla. It is what gives to vanilla extract its characteristic taste. Synthetic vanillin is one of the comparatively recent discoveries in organic chemistry, of which indigo and madder are other examples. It is exactly the same as the natural vanillin. The flavor produced by synthetic vanillin is as wholesome as that produced by the vegetable extract of vanilla, and is substantially identical with it in taste, the difference, if any, being due to accidental substances in the natural extract. As used by the claimant, "cream vanilla" is applied to cream-colored Puddine flavored with vanillin, and "rose vanilla" to exactly the same thing colored pink with a harmless dye, the difference being in color only.

When a proprietary product is sold in different flavors, I see no reason why there may not be a distinctive name of a particular flavor, nor any reason for denying to such a name the protection of the proviso. The very purpose of the proviso, as I construe it, was to save distinctive names, which might be of great value, and the use of which might otherwise have been forbidden. "The purpose of the law is the ever insistent consideration in its interpretation." McKenna, J., U. S. *v.* Antikamnia Chem. Co. (U. S. Sup. Court, 5th January, 1914.) I find and rule that "Cream Vanilla" and "Rose Vanilla" as used with "Puddine" are artificial and distinctive names adopted by the claimant, the use of which is not misbranding. It is unnecessary to decide whether the word "vanilla" applied to food amounts, as the plaintiff contends, to a representation that the taste thereof has been produced by the vegetable extract, and not by the synthetic product.

Decree for plaintiff.

On March 20, 1914, final decree of condemnation was entered, and it was ordered by the court that the product should be destroyed by the United States marshal and that the United States recover from said claimant the costs of the proceedings, taxed at $44.40. In the final decree, the court (Morton, *J.*) found and ruled that the words "Fruit Flavored" upon the cartons containing puddine were a statement regarding such article or the ingredients or substances contained therein which was false and misleading and constituted misbranding within the act of Congress approved June 30, 1906.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 14, 1914.*

**3330. Adulteration of cream. U. S. v. Charles T. Hill. Plea of guilty. Fine, $5.** (F. & D. No. 226–c.)

On April 8, 1914, the United States attorney for the District of Columbia, acting upon a report by the Health Officer of said District, authorized by the Secretary of Agriculture, filed an information in the police court of the District aforesaid against Charles T. Hill, late of the State of Maryland, alleging the sale by said defendant, in violation of the Food and Drugs Act, on February 10, 1914, of a quantity of cream which was adulterated. Adulteration was alleged in the information for the reason that a valuable constituent of the article of food, to wit, butter fat, was left out and abstracted in whole and in part.

On April 8, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of $5.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 15, 1914.*

**3331. Adulteration of milk. U. S. v. Ludwood A. Popkins. Plea of guilty. Fine, $10.** (F. & D. No. 227–c.)

On April 10, 1914, the United States attorney for the District of Columbia, acting upon a report by the Health Officer of said District, authorized by the Secretary of Agriculture, filed an information in the police court of the District aforesaid against Ludwood A. Popkins, Alexandria, Va., alleging shipment

by said defendant on March 19, 1914, from the State of Virginia into the District of Columbia, of a quantity of milk which was adulterated. Adulteration of the product was alleged in the information for the reason that it had been mixed and packed with a substance, to wit, water, which reduced and lowered its quality and strength.

On April 10, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 15, 1914.*

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S. R. A.—Chem. 7, Suppl. Issued January 11, 1915.

U. S. DEPARTMENT OF AGRICULTURE,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, Chief of Bureau.

# SERVICE AND REGULATORY ANNOUNCEMENTS.[1]

JULY, 1914.

## SUPPLEMENT.[2]

N. J. 3332–3408.

## NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

**3332. Alleged adulteration and misbranding of vanilla extract, and adulteration of grain alcohol varnish. U. S. v. Oscar J. Weeks (O. J. Weeks & Co.). Tried to the court and jury. Verdict of not guilty in Vanilla Extract Case. Verdict of guilty in Grain Alcohol Varnish Case. Fine, $125. Grain Alcohol Varnish Case pending on appeal and writ of error in the Circuit Court of Appeals for the Second Circuit.** (F. & D. Nos. 2976, 4242. I. S. Nos. 20125–c, 12575–c.)

On June 26, 1912, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Oscar J. Weeks, doing business under the name and style of O. J. Weeks & Co., New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 29, 1911, from the State of New York into the State of Louisiana, of a quantity of vanilla extract which was alleged to have been adulterated and misbranded. The product was labeled: "Vanilla Ext. From O. J. Weeks & Co., Manufacturers of specialties for bakers, confectioners and ice cream makers, 216 Franklin St., New York City, N. Y. Herrmann & Jaffa, New Orleans, La. * * *"

Analysis of a sample of the product by the Bureau of Chemistry of this department showed it to consist of an imitation vanilla extract artificially colored with caramel and containing commercial glucose. Adulteration of the

[1] In conformity with a uniform plan for the issuance of information, instructions, and notices of a regulatory nature by various branches of the department, as prescribed by the Acting Secretary of Agriculture in memorandum No. 57, dated December 26, 1913, this publication is issued monthly by the Bureau of Chemistry. It covers approximately the month for which it is dated, and each month's issue is expected to appear during the succeeding month. Free distribution is limited to firms, establishments, and journals especially concerned. Others desiring copies may obtain them from the Superintendent of Documents, Government Printing Office, Washington, D. C., at 5 cents each, or 50 cents a year.

[2] Owing to the large accumulation of Notices of Judgment now awaiting publication, the plan of issuing supplements to the Bureau of Chemistry Service and Regulatory Announcements has been adopted. Such supplements will be published in the future whenever it is necessary to issue an excessive number of Notices of Judgment.

product was alleged in the information for the reason that there was substituted wholly for the aforesaid article, vanilla extract, another substance which was not vanilla extract, to wit, a substance containing coumarin, commercial glucose, and caramel; and said article was further alleged to have been adulterated [in that it was colored (?)] in such a manner as to conceal its inferiority. Misbranding was alleged for the reason that the aforesaid label regarding said article and the substances and ingredients contained therein was false and misleading, and said label was calculated to deceive and mislead the purchaser thereof, in that said label would indicate that said article was extract of vanilla, whereas, in truth and in fact, said article was not extract of vanilla, but was a substance containing coumarin, commercial glucose, and caramel, and in fact was an imitation of the genuine product.

On August 6, 1912, the said United States attorney, acting upon a report by the Secretary of Agriculture, filed another information in the District Court of the United States for the Southern District of New York against the defendant aforesaid, alleging shipment by him, in violation of the Food and Drugs Act, on April 14, 1911, from the State of New York into the State of Rhode Island, of a quantity of grain alcohol varnish which was adulterated. This product was labeled: "Grain Alcohol Varnish. O. J. Weeks & Co. Special for manufacturing bakers, Conf. & Ice Cream Makers. N. Y., N. Y. Serial No. 2049."

Analysis of a sample of the product by said Bureau of Chemistry showed the following results:

Arsenic (as arsenous oxid) (parts per million)---------- { 34.5 / 34.7

Tests for acetone: Positive.
Immersion refractometer test for methyl alcohol: Negative.

This sample contained a poisonous substance in appreciable amount, namely, arsenic.

Adulteration of the product was alleged in the information for the reason that said article contained an added poisonous and deleterious ingredient, to wit, arsenic, which might render the said article injurious to health.

On October 17, 1913, the cases, which had been consolidated, having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the following charge was delivered to the jury by the court (Hunt, *J.*):

I wish, gentlemen, that in finally submitting this case that I could with greater lucidity take up the testimony of these gentlemen who have testified as experts and put it all before you with such comment as might seem proper. But it is technical, and unless one has had an opportunity to give a great deal of study to the particular subject with which the matter under investigation is allied, it is difficult to enter into an analysis of what they have said. However, the law imposes upon you as jurors the duty of weighing the evidence carefully on both sides and considering it, and reaching conclusions which satisfy your minds, justified by the evidence you have heard from the witnesses on the stand.

Bear in mind, gentlemen, that this is a criminal case. The United States, by the usual process of indictment or information puts the defendant upon his trial, and charges that he has violated a certain act of Congress. Now, the act under which the indictments or information are drawn is entitled: "An act for preventing the manufacture, sale or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," passed in 1906 and amended in 1912.

Turning first to the Vanilla Extract case—there are two counts in the indictment. First, that which charges that this defendant shipped a certain article of food in a barrel labeled as follows:

"Vanilla Ext. From O. J. Weeks & Co. Manufacturers of specialties for bakers, confectioners, and ice-cream makers, 216 Franklin St., New York City, N. Y. Herrmann & Jaffa, New Orleans, La."

The charge is that this article shipped was adulterated, in that there was substituted wholly for the aforesaid article vanilla extract, another substance which was not vanilla extract, to wit, a substance containing coumarin, commercial glucose and caramel.

The second count charges the defendant with having on May 29, 1911, sent a certain article of food in a barrel labeled as just heretofore read, addressed to Herrmann & Jaffa, New Orleans, La., which said article shipped as aforesaid was misbranded in that the aforesaid label regarding said article and the substance and ingredients contained therein, was false and misleading, and said label was calculated to mislead and deceive the purchaser thereof, in that said label would indicate that said article was extract of vanilla, whereas in truth and in fact said article was not extract of vanilla, but was a substance containing coumarin, commercial glucose and caramel, and in fact was an imitation of the genuine product.

The testimony is very brief under that charge. As I understand the case, as finally submitted to you on this information, it goes to show that there was a shipment to this New Orleans firm; that the barrel was marked as described in the information; that the substance contained in the barrel was not vanilla extract, but was a substitute made up of the substances containing coumarin, commercial glucose and caramel.

The defendant says that he had nothing to do with misbranding, and he produces a witness who says that it was a pure and simple mistake; that he had no orders to misbrand; that he was in a hurry and that he failed to do that which he ought to have done. And the defendant himself says that he knew nothing whatsoever of this; did not attend to the shipments himself. Now, that brings us properly to this point: There is running through the criminal law a doctrine of agency; that is to say, a man may be guilty criminally of doing that which is inhibited by the law, provided he aids, countenances or advises, or knowingly stands by and permits that to be done which he knows to be criminal, and does not forbid it.

The question then in this case would seem to me to be this: Has the Government satisfied you by the measure of proof which is requisite in criminal cases—that is, beyond a reasonable doubt, that this defendant on trial, authorized or countenanced the putting of the label on the barrel that was placed there by an employee of his. Of course, a man may not shield himself from crime by closing his eyes to that which he must in reason know exists.

But on the other hand, the duty of the Government is to trace it to him in such a way that you feel satisfied that he is the responsible person, who either directed it or countenanced it, knowing that it was to be misbranded. If you are satisfied he was, beyond a reasonable doubt, then you should convict. If you are not so satisfied, you should acquit him.

Now, we turn to the Grain Alcohol case. One of the provisions of this statute is, that for the purposes of this act an article shall be deemed to be adulterated, in the case of food, if it contains any added poisons or other added deleterious ingredients which may render such article injurious to health. Then comes a provision, which is not material in this case, simply explanatory, "that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this act shall be construed as applying only when said products are ready for consumption."

That has naught to do with this case, so we go back:

Adulteration shall be deemed to be when a food contains any added poisonous or other added deleterious ingredients which may render such article injurious to health.

The charge here is that this was a shipment labeled "Grain Alcohol Varnish. O. J. Weeks & Co. Special for Manufacturing Bakers, Conf. and Ice Cream Makers, N. Y. Serial #2049," which said article shipped as aforesaid was adulterated, in that the said article contained an added poisonous and deleterious ingredient to wit, arsenic, which might render the said article injurious to health.

Now, gentlemen, in the light of this testimony, are you satisfied that the shellac was shipped as an article of food, or to be used for food purposes? Did it

contain as an added ingredient, arsenic? And, would such added ingredient render the article injurious to health? Those are the essential questions for you to determine under this information.

I think you will find but little trouble with relation to the general proposition that shellac is oftentimes used for purposes of coating fudge candy, perhaps, to give it a gloss. I think one of the witnesses said that it is often so used or was often used. And the next question is, did it contain as an added ingredient arsenic. There is testimony on behalf of the prosecution to the effect that this fudge was analyzed and found to contain arsenic, and there is also testimony on behalf of the prosecution which tends to show that the amount of arsenic found would tend to injure the health of persons who ate the candy covered with the substance.

There is testimony on behalf of the defense by some of the experts to the effect that the amount of arsenic under any assumption that was indulged in in the case, could not have any injurious effect upon either a child or an adult, consuming it from day to day.

We have listened for several hours to discussions by these gentlemen as to the effect of arsenic upon the human system, some saying that it has what might be called a cumulative effect, and some, that that is an inaccurate term and that it does not cumulate in the system. We have testimony as to the precise amount that is often regarded as within a safe margin, that is, an amount which if taken by an adult or a child would do no harm. The testimony of the defense tends to show that the amount of arsenic which may have been contained in any of the shellac used, such as it is contended was used in this case, would not injure a child or an adult.

On the other hand, the testimony if I remember it, of the chemist from Boston, Dr. Boos, is that it might be that the 0.002 part of arsenic would have an insidious effect. And some of these gentlemen have quoted substantially from the report of the English Commission made in 1900, wherein there was some expert detailed analysis of the effect of arsenical poison.

Bear in mind, there must have been the added ingredient, and the added ingredient must have been such that it might injure health. The question whether or not it was added, whether it was so deleterious, if deleterious at all, as that it would reasonably have a tendency to injure health, is one of fact that you as men of common sense exercising your own best judgment in the light of this testimony must solve.

The burden is upon the Government. The presumption is that the defendant is innocent. He stands innocent until the proof satisfies you of his guilt beyond a reasonable doubt—that is, so satisfies you that you would be willing to act in your own most important affairs of life.

The defendant has taken the witness stand in his own behalf. He has a right to do this. You should consider his testimony with the other evidence in the case, and give it such weight as you find it fairly entitled to. You may take into consideration the fact that he is a defendant; the nature and seriousness of the offense with which he is charged, and sift his evidence.

Mr. CARLIN. I would ask the court to charge my second request.

The COURT. You may save your points. I think they are sufficiently covered. I do not know what your practice is here. The practice I have always indulged in as to the refusal of the court to give each and every instruction requested is the defendant excepts and the exception is noted to the refusal to give any instructions requested and not given.

There is one point here that you ask the court to charge:

"That to convict the defendant they must find that the varnish shipped by him was an article of food or an article which enters into the composition of food and that this must be proved to them beyond a reasonable doubt, otherwise they must find the defendant not guilty."

That is substantially covered by the charge I have given.

Mr. CARLIN. That is covered, yes.

Mr. STEPHENSON. I ask your honor to charge that guilty intent is not part of this offense, and it is not necessary to prove that the defendant knew the nature of the product which was shipped in this case, if it is a fact that he did make the shipment.

The COURT. That is true. The law makes the acts that are defined to be penal in themselves criminal. Whether or not the man intended to ship poison is immaterial in this case. The question is, Did he?

JUROR No. 9. I want to understand if this man, after he sent this, not marked imitation, I understand he wrote and sent him labels, telling him it was imitation. Did I understand that right?

The COURT. No. There were labels shipped with the shipment. He says those labels were sent with the shipment.

The jury thereupon retired and after due deliberation returned into court with a verdict of not guilty upon the charge of shipping in interstate commerce vanilla extract, which was alleged to have been adulterated and misbranded, and a verdict of guilty upon the charge of shipping in interstate commerce grain alcohol varnish which was adulterated, and the court thereupon imposed a fine of $125 and costs in the latter case. Thereafter defendant brought a writ of error and took an appeal from the foregoing judgment of conviction to the Circuit Court of Appeals for the Second Circuit, in which court the case is now pending.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 15, 1914.*

**3333. Adulteration and misbranding of apple butter. U. S. v. Chicago Concentrating Co. Plea of guilty. Fine, $100 and costs.** (F. & D. No. 3378. I. S. No. 17040–c.)

On April 26, 1913, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Chicago Concentrating Co., a corporation, Chicago, Ill., alleging the sale by said defendant on March 14, 1911, under a printed guaranty borne on the face of the invoice in words and figures as follows, to wit, "We, the undersigned, do hereby guarantee that the articles of food covered by this invoice are not adulterated or misbranded within the meaning of the Food and Drugs Act, June 30, 1906. Chicago Concentrating Co., Chicago," of a quantity of so-called pure apple butter which was adulterated and misbranded in violation of the Food and Drugs Act, which said product having been repacked but not altered, adulterated, or misbranded in any manner, was shipped by the purchaser thereof on March 27, 1911, from the State of Illinois into the State of New York. The product was labeled: "Sur Pur Brand Pure Fruit Butter. Packed for Harris Bros., Chicago, Pure Apple Butter."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Solids (per cent) | 57.6 |
| Nonsugar solids (per cent) | 7.4 |
| Sucrose, Clerget (per cent) | 3.5 |
| Reducing sugars as invert before inversion (per cent) | 46.7 |
| Commercial glucose (factor 163): None. | |
| Polarizations (°V.): | |
| Direct at 25° C | —12.3 |
| Invert at 25° C | —16.9 |
| Invert at 87° C | — 0.5 |
| Ash (per cent) | 0.52 |
| Alkalinity of soluble ash (cc N/10 acid per 100 grams) | 27.0 |
| Acids (cc N/10 alkali per 100 grams) | 113.0 |
| Insolble solids (per cent) | 1.82 |
| Phosphoric acid as $P_2O_5$ (per cent) | 0.189 |
| Color: Natural. | |
| Salicylic and benzoic acids: None. | |
| Qualitative test for starch: Present. | |
| Taste: Resembles apple. | |
| Arsenic: None. | |

Adulteration of the product was alleged in the information for the reason that it was labeled, sold, and delivered as pure apple butter, whereas, in truth and in fact, another substance, to wit, phosphoric acid, in excess of the quantity normally present in pure apple butter, had been substituted in part for the article of food aforesaid. Adulteration was alleged for the further reason that a substance, to wit, phosphoric acid, in excess of the quantity normally present in pure apple butter, was mixed and packed with the article of food aforesaid so as to reduce, and lower, and injuriously affect the quality and strength of said article. Misbranding was alleged for the reason that the jars containing the article each bore a label in the words and figures set forth above, which said statement on the label appearing on each of the jars containing the article was false and misleading, in that said statement represented to the purchaser that the article of food was a pure apple butter composed entirely of pure fruit butter made from apples, whereas, in truth and in fact, the article of food aforesaid contained a substance, to wit, phosphoric acid, in excess of the quantity normally present in pure apple butter, the presence of which was not declared upon the label on each of the jars containing said article of food. Misbranding was alleged for the further reason that said statement on the label aforesaid deceived and misled the purchaser into the belief that the article of food was a pure apple butter composed entirely of pure fruit butter made from apples, whereas, in truth and in fact, each of the jars aforesaid did not contain pure apple butter, but contained a mixture of apple butter and a substance, to wit, phosphoric acid, in excess of the quantity of said phosphoric acid normally present in pure apple butter, made in imitation of pure apple butter.

On February 6, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $100 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 15, 1914.*

**3334. Adulteration and misbranding of fruit wild cherry compound, and misbranding of special lemon, lemon terpene and citral. U. S. v. Oscar J. Weeks (O. J. Weeks and Co.). Trial to the court and a jury. Verdict of guilty. Fine, $150 and costs. Pending on appeal and writ of error in the Circuit Court of Appeals for the Second Circuit.** (F. & D. Nos. 3553, 4672. I. S. Nos. 1346–d, 14195–d.)

On August 8, 1912, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Oscar J. Weeks, doing business under the firm name and style of O. J. Weeks and Co., New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 10, 1911, from the State of New York into the State of Texas, of a quantity of fruit wild cherry compound, which was alleged to have been adulterated and misbranded. The product was labeled: "Fruit Wild Cherry Compound. Guaranteed to contain no Ether or Chloroform. From O. J. Weeks & Co. Specialties for Manufacturing Bakers, Confectioners and Ice Cream Makers, New York, N. Y. U. S. Serial Number 2049." "Guaranteed under the Food and Drugs Act, June 30, 1906."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed it to consist of an imitation wild cherry flavor composed essentially of a solution of benzaldehyde (or oil of bitter almonds) in dilute alcohol. It was artificially colored with a coal tar dye, namely, amaranth.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, an imitation wild cherry essence, had been mixed and packed with said article, purporting to be fruit wild cherry compound, so as

to reduce and lower and injuriously affect the quality and strength of said article, and for the further reason that a substance, to wit, an imitation wild cherry essence, had been substituted in part for the genuine article, fruit wild cherry, which the said article purported to be. Adulteration was alleged for the further reason that the article had been colored in a manner whereby inferiority was concealed.

Misbranding was alleged for the reason that the label and package of the said article bore the statement, "Fruit Wild Cherry Compound," which said statement was false and misleading in that it conveyed the impression that said article was a fruit wild cherry compound, whereas, in truth and in fact, the said article consisted chiefly of imitation wild cherry essence, artificially colored.

Misbranding was alleged for the further reason that the article was labeled and branded, "Fruit Wild Cherry Compound," so as to deceive and mislead the purchaser into the belief that said article was a genuine fruit wild cherry compound, whereas it consisted chiefly of an imitation wild cherry essence, artificially colored.

The defendant thereafter interposed a demurrer to this information, and, on October 28, 1912, the demurrer as to the first count of the information was sustained, and as to the second count was disallowed, as will more fully appear from the following decision by the court (Mayer, *J.*):

There are four cases and the defendants have filed motions to quash in each. As to the three cases (4–426, 475 and 427), I decided on oral argument favorably to the Government's contention on all but one point, and upon that I reserved decision.

The proposition in question is that the information should be quashed because they are not supported by verification or oath showing personal knowledge or probable cause.

The proceeding by information, as in this case, is an ancient method of procedure which has come to us from the common law of England and it is well settled that this method of procedure is proper here. The law on the subject is concisely stated in Bishop on Criminal Procedure.

The demurrers in three of the case are, therefore, disallowed.

In the case against Weeks (No. 4–500), demurrer has been interposed upon the additional ground that the counts of the information and each of them are insufficient and fail to charge an offense. The information is in two counts.

In the first count the information states that the article of food was labeled as follows:

"Fruit Wild Cherry Compound. Guaranteed to contain no Ether or Chloroform. From O. J. Weeks & Co. Specialties for Manufacturing Bakers, Confectioners and Ice Cream Makers, New York, N. Y. U. S. Serial Number 2049." "Guaranteed under the Food & Drugs Act, June 30, 1906," and being so labeled was adulterated in that a substance, to wit, an imitation wild cherry essence, had been mixed and packed with the article of food purporting to be fruit wild cherry compound so as to reduce and lower and injuriously affect the quality and strength of the article.

It is further stated that the article is adulterated in that an imitation wild cherry essence had been substituted in part for the genuine article, fruit wild cherry, which the article purports to be, and further that the article is adulterated in that it has been colored in a manner whereby inferiority is concealed.

Briefly, the information attacks the propriety of the label.

It is obvious from reading the label that there is no suggestion that the article purports to consist wholly of fruit wild cherry. The very phraseology negatives any such suggestion.

In this connection it may be well to comment on Frank *v.* United States, 192 Fed. Rep. at page 869, cited by the Government. There it will be noted that the article was called "compound white pepper." The court said:

"A primary label 'White Pepper Compound' would doubtless fairly indicate that the article is a compound of white pepper and some other ingredient * * *."

Then the court goes on to say that the term "compound white pepper" does not necessarily import the same idea as "white pepper compound" and calls

attention to the fact that the adjective "compound" is sometimes used colloquially as meaning "having added strength."

But the word "compound" in the case at bar, as in the phrase "white pepper compound", is a noun and indicates that the fruit wild cherry is in composition or combination with something else. A good many dictionary definitions will be found, and it is necessary only to cite one which is concise and clearly stated: "that which is compound or compounded; anything that is a combination of two or more elements, ingredients or parts, a compound substance." (Standard Dictionary.)

Assuming that the article does not contain any added poisonous or deleterious ingredients, there is nothing to prevent the combination of fruit wild cherry with an imitation wild cherry essence, and it is obvious that the purchaser is at once notified by the title that the article in question does not consist wholly of fruit wild cherry but that fruit wild cherry is only one of the ingredients in combination with other ingredients.

The Government asks me to hold that the ingredients of the compound must be stated on the package. I find no warrant in the statute for any such holding. The statute was carefully drawn after extended discussion and certainly if Congress had intended that the ingredients of a compound should be set forth upon the label, the statute would have so stated.

I have not overlooked the case of William Henning & Co. *v.* United States, 193 Fed. Rep. 52. In the report of that case there is nothing to indicate how the label read and for all I know, it may have been subject to the criticism for use of the word "compound" as in the Frank case, or there may have been some other fact which contributed to the decision.

The statement under this count, that the article had been colored in a manner whereby inferiority is concealed, is of no consequence. The coloring may have been the proper and natural result of the combination. There is in this count no allegation of artificial coloring.

For the reasons briefly outlined, the demurrer to this count is sustained.

The second count refers to the same label but here it is stated that the article consists chiefly of imitation "wild cherry essence artificially colored."

This, to my mind, presents an entirely different situation. I think the phrase or name "Fruit Wild Cherry Compound" conveys to the mind a representation that the dominant element in the combination is genuine fruit wild cherry and that to this genuine fruit wild cherry has been added something else, for instance, in the nature of an essence or extract which, in combination with the genuine fruit wild cherry, makes the "Fruit Wild Cherry Compound." Of course, the purpose of the statute as to misbranding, was to prevent deception of the public and if it be shown that the dominant element in this compound is the imitation essence and not the fruit, then it seems to me the statute has been violated.

In this count the statement is made that the article consists chiefly of an imitation "wild cherry essence artificially colored." When I use the expression, "dominant" I do not mean that necessarily the fruit wild cherry must be greater in volume than the imitation essence. Sometimes one element of combination, by reason of its character and strength, even if smaller in quantity than another element, may, nevertheless, control the character of the combination This, and questions relevant to it, can best be developed on the trial when the court and jury will have the benefit of expert explanation.

I think it unwise on demurrer, to pass upon the question raised as to artificial coloring, and that a much more satisfactory result will be attained when the court is enlightened upon the trial upon this subject, and it is not necessary to pass upon this point because I have already indicated that I shall disallow the demurrer to this count in any event.

For the reasons stated the demurrer to the second count is disallowed.

On May 21, 1913, the said United States attorney filed in the United States District Court for the Southern District of New York an additional information in this case, and, in this latter information, it was alleged that said product was adulterated in that it was artificially colored with a coal tar dye in such a manner as to simulate a true fruit wild cherry, and in a manner whereby its inferiority was concealed.

Misbranding of the product was alleged in this information for the reason that it was sold and offered for sale by the said defendant under the distinctive

name of another article, to wit, fruit wild cherry, whereas, in truth and in fact, the said article was not fruit wild cherry but was an imitation thereof.

On April 22, 1913, the said United States attorney, acting upon a report by the Secretary of Agriculture, filed in the said District Court of the United States for the Southern District of New York another information against the said defendant, alleging shipment by him, in violation of the Food and Drugs Act, on January 25, 1912, from the State of New York into the State of Georgia, of a quantity of "Special Lemon," so-called, which was misbranded. This product was labeled: "Special Lemon. Lemon Terpene and Citral—O. J. Weeks & Co., New York, N. Y. U. S. Serial number 2049 Guaranteed under the Food & Drugs Act, June 30, 1906."

Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Citral (per cent) | 7.46 |
| Alcohol (per cent) | 1.21 |
| Specific gravity at 15.6° C | 0.8554 |

An imitation lemon oil containing alcohol and added citral.

Misbranding of this product was alleged in the information for the reason that the article bore the statement "Special Lemon," regarding it and the ingredients and substances contained therein, which was false and misleading in that the statement would indicate that said article was a product derived from lemon, whereas, in truth and in fact, the said article was not a product derived from lemon, but was a mixture containing alcohol and citral derived from lemon grass, and was in fact an imitation of lemon oil.

Misbranding was alleged for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser thereof in that said label would indicate that the said article was a product derived from lemon, whereas, in truth and in fact, the said article was a product containing alcohol and citral derived from lemon grass, and was in fact an imitation of lemon oil.

Misbranding was alleged for the further reason that the article was an imitation of lemon oil, and was offered for sale by the said defendant under the distinctive name of another article, to wit, a product derived from lemon, whereas, in truth and in fact, the said article was not a product derived from lemon, but was a mixture containing alcohol and citral derived from lemon grass, and was in fact an imitation of a product derived from lemon.

On October 17, 1913, the case based on the two informations first referred to, and the case based on the last mentioned information, having been consolidated into one court proceeding, and having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Hunt, *J.*):

Gentlemen, cases of this character are of course important to the interests of the Government and important to the interests of men engaged in business. The Government as you know has, within the past few years, taken up and given very great consideration through Congress, to legislation which is intended to prevent the manufacture, sale or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines or liquors, and for regulating traffic in such things, and in the execution of its purpose has passed statutes wherein are found those particular sections under which the indictment now in this case before you has to be considered.

On the other hand, as I have intimated, there is no aim on the part of the Government to interfere with legitimate business operations carried on in the manufacture of such products as may be used in the way of drugs, food or medicines, and liquors, unless there is a clear violation of the statutes.

While there are several counts in these indictments, the case is simplified by eliminating the more formal allegations and condensing the substance of the charges in this way.

Let us take the so-called special lemon case. The first count in the indictment in that case charges that the article was misbranded, in that the statement "special lemon" was false and misleading, in that it would indicate that the article was a product derived from lemon, whereas, it is charged, that the article was not a product derived from lemon, but was a mixture containing alcohol and citral, derived from lemon grass, and was in fact an imitation of lemon oil.

The charge also is that it was misbranded so as to mislead and deceive, in that the label, which is in evidence before you, would indicate that it was a product derived from lemon, whereas the Government says it was a product containing alcohol and citral, derived from lemon grass, and was in fact an imitation of lemon oil. That is the first count.

The second count in the special lemon case charges that the article labeled "special lemon," as indicated in the label which is introduced in evidence, was misbranded, in that it was an imitation of lemon oil, and was offered for sale under the distinctive name of another article, namely, a product derived from lemon, whereas it was not a product derived from lemon, but was a mixture containing alcohol and citral, derived from lemon grass and was an imitation of a product derived from lemon.

Next we turn to the law. The indictment uses the word "misbranded" as Congress has defined misbranded. The statute says it shall apply to all articles of food or other articles which enter into the composition of food, of the package or label of which shall bear any statement designed or devised regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

Later on it says: "That for the purpose of this act an article shall also be deemed to be misbranded if it be an imitation of or offered for sale under the name of another article."

Now, take that brand, label—I mean as it is offered in evidence (you will be permitted to take it to your jury room) and ask yourselves whether you are satisfied that it was a misbrand, by its bearing any statement or device or design which was false or misleading in any particular. Was there any imitation, as charged in the indictment, or was it the article offered for sale under the distinctive name of another article than it really was.

You have heard the experts on behalf of the Government and in behalf of the defendant. There is some contradiction of testimony between them as to the composition of the elements which entered into this article. I will not endeavor to recapitulate it. It is somewhat technical in its nature. If you desire to have any of it read, I will ask the stenographer to read it to you, in case you do not recall what anyone said. But the question resolves itself into whether or not as offered, it was misleading and was a misrepresentation, and would ordinarily deceive a purchaser to whom it was offered.

Now, we come to the wild cherry case. You will remember that in the wild cherry case there are two indictments. The first charges substantially that the defendant shipped to Texas an article which entered into the composition of food labeled "fruit wild cherry compound. Guaranteed to contain no ether or chloroform. From O. J. Weeks & Co."

The charge is that this article was misbranded in that the label and the statement on the label was false and misleading, in that it conveyed the impression that the article was a fruit wild cherry compound, whereas the charge is that the article consists chiefly of imitation wild cherry essence artificially colored, and that it is further misbranded in that the label "fruit wild cherry compound" would deceive and mislead a purchaser in the belief that it was a genuine fruit wild cherry compound, whereas it consisted, so it is alleged, chiefly of imitation wild cherry essence artificially colored.

The second indictment in the wild cherry case charges that the article was shipped so adulterated in that it was artificially colored with coal-tar dye, in such a manner that it was intended to simulate a true fruit wild cherry color, and in a manner whereby its inferiority was concealed.

The second count of the second indictment charges that the article was misbranded and sold and offered for sale by Weeks & Co. under the distinctive name of another article, to wit, fruit wild cherry, whereas in truth and in fact the article was not fruit wild cherry, but was an imitation thereof.

As in the other case, you take the label, take the testimony of these gentlemen with relation to what there was in the contents and bottles, and ask

yourselves whether there was a misleading, material misleading element there; whether it would deceive a purchaser. Whether the purchaser would get what the label purported to say he was getting.

In both of these cases, if the label only conveyed ordinarily to the purchaser that which was within the bottle, then the defendant should not be convicted.

If it was misleading and intended to mislead, if it was misbranded as already explained to you, as I have read the statute, and you are satisfied that it was misbranded, was labeled falsely, then you should convict.

The defendant of course is presumed to be innocent. The usual rules apply here that do in all criminal cases. The Government undertakes to satisfy you of his guilt, and the proof must be such as convinces you in a way where you would be willing to act in your own most grave and important concerns of life.

If there is any particular bit of the testimony, as I have said before, that you would like to have read, you are at liberty to call for it. I say that in this case because it is of a technical character, and if I endeavored to recapitulate it myself, as detailed by the chemists, I would feel that I should ask the stenographer to go over it, lest my recollections be imperfect.

You have the testimony as to what entered into those respective articles. Whether or not there was wild cherry, whether or not it was in such an insignificant amount, or such a significant amount as to remove or to prove the charge of misleading as made in the indictment.

What is the meaning of the word used in the lemon case, on the label? I will read that to you. "Special lemon, lemon terpene and citral." We have had some gentlemen tell us here what their ideas were as to what the word "special" means. The essential point is to remember the whole thing "special lemon, lemon terpene and citral."

Ordinarily, special would mean, I should say, something with a particular characteristic out, perhaps, of the ordinary. "Special lemon"—the word lemon appears there. Why was that used? What was its purpose? And followed by "lemon terpene and citral."

You have heard the definition of what terpenes are. I do not know but that I am correct in saying that they may be regarded as perhaps a by-product derived from the lemon rind. Am I correct in that statement? Generally, citral is I think conceded to be a lemon grass product; lemon grass.

I will give you the indictments.

When you have reached a conclusion, you will by your foreman announce what it is.

You may convict upon any of the counts submitted or you may acquit under certain ones and convict under others, or you may acquit under all, as you think the evidence justifies.

Mr. STEPHENSON. Your honor, will you instruct the jury not to consider the first count?

The COURT. I have marked that. I made no reference to that. Gentlemen, you will find my own mark striking out the first count of the indictment in the cherry compound case, which was numbered four.

Mr. CARLIN. I respectfully request the court to charge, under the first subdivision of the fourth section, defining adulterations, and I ask the court to charge there, that if they find that the words "special lemon" was a distinctive name for this article, they must acquit in the special lemon case.

The COURT. I deny that. That is covered.

Mr. CARLIN. I ask the court to charge that that first subdivision applies to and modifies the section one which was read by the court. They both must be considered together, in the law of misbranding.

The COURT. I decline that.

(Exception by defendant.)

Mr. CARLIN. I respectfully ask the court to charge that they must consider in this label, not only the words "special lemon" but also the words "lemon terpene and citral."

The COURT. I have so charged.

Mr. CARLIN. I ask the court to charge, that if they find that this product consisted of lemons, terpene, and citral, they must acquit the defendant.

(Request denied.)

(Exception by defendant.)

Mr. CARLIN. I respectfully ask the court to charge that the jury can only consider the statement on the label, and cannot consider the testimony in regard to the conversation had by a salesman in Atlanta.

The COURT. That is declined. I will however tell the jury that they must remember that while that testimony is admissible, it is only binding on the defendant, provided they are satisfied beyond a reasonable doubt that they were made by his authority and direction. In other words to hold a principal liable in a criminal action, you must be satisfied that the representation was made by his authority.

Mr. CARLIN. Now, in the other case, the second case, I ask the court to charge the law in regard to mixtures and compounds. That is the second subdivision of the fourth, and that that is the law that applies to any compound which is shipped.

The COURT. Gentlemen, you will remember I read to you that "If it be an imitation of or offered for sale under the name of another article," for the purposes of the article, it should be deemed to be misbranded.

There is a clause in the law: "In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said articles have been manufactured or produced," it shall not be deemed to be adulterated or misbranded.

Mr. CARLIN. The second question, if it is labeled a compound and contains no deleterious substance.

The COURT. I think that is covered. I deny that. I think the charge covers that.

(Exception by defendant.)

Mr. CARLIN. I ask the court to charge that it is not contended that this product contained any poisonous or deleterious ingredients, and if that be true, being labeled a compound, the product was properly labeled.

The COURT. I think that is immaterial. There is no suggestion here of any deleterious or poisonous substance.

(Exception by defendant.)

Mr. CARLIN. I ask the court to charge, that if the product is found to have been shipped to the Novelty Candy Company in Jersey City, there is a fatal variance, and the verdict must be for the defendant.

The COURT. No, my view of the law is not in accordance with that. If the defendant sent a package to Jersey City, there to be shipped to Texas for his account, to be delivered in Texas to the consignee, that was a shipment.

(Exception by defendant.)

Mr. CARLIN. The district attorney in summing up spoke of ether and chloroform. I ask your honor to charge that there is no such question in this case.

The COURT. They will not be misled on that.

JUROR No. 6. Will your honor read again that last statement there about excepting compounds?

The COURT. The language is, that—

"If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

"First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced."

That is applicable in cases of mixtures or compounds which are put out as articles of food under their own distinctive names, and not in imitation of or offered for sale under the distinctive name of another article. You will bear in mind, that the charge is that they have been put out under the distinctive name of other articles.

"In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word 'Compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the package in which it is offered for sale: *Provided*, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only."

Mr. STEPHENSON. I ask your honor to charge that that last section which you have read does not apply to the article on which the word "compound" appears, if in fact the article is in imitation.

The COURT. That is true. Of course, it does not apply if the article is in imitation.

Mr. CARLIN. I except to that charge, and ask the court to define to the jury the difference between imitation and a compound.

(Denied.)

(Exception by defendant.)

The jury thereupon retired and, after due deliberation, returned into court with a verdict of guilty, and the court thereupon imposed a fine of $100 in the case covered by the first two informations, and a fine of $50 in the case covered by the last information referred to, and costs. Thereafter defendant brought a writ of error and took an appeal from this judgment to the Circuit Court of Appeals for the Second Circuit, in which court the case is now pending.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 15, 1914.*

**3335. Adulteration and misbranding of peppermint essence. U. S. v. Royal Chemical Works. Plea of guilty. Fine, $100 and costs.** (F. & D. No. 3778. I. S. No. 17347–c.)

On August 4, 1913, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Royal Chemical Works, a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on December 12, 1910, from the State of Illinois into the State of Wisconsin, of a quantity of so-called peppermint essence which was adulterated and misbranded. The product was labeled: (On shipping tag) "10 gals. pepp (yellow) See A. M. S. From Royal Chemical Works, 1245–1257 Garfield Ave., Chicago."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Specific gravity at 15.6° C | 0.9287 |
| Alcohol (per cent by volume) | 52.96 |
| Methyl alcohol: None. | |
| Solids (grams per 100 cc) | 0.06 |
| Peppermint oil (per cent by volume) | 0.40 |
| Color: Naphthol Yellow S. | |

Adulteration of the product was alleged in the information for the reason that oil of peppermint in the quantity of not less than 3 per centum by volume is an essential ingredient of the article of food known as peppermint essence, whereas a certain dilute essence of peppermint containing not more than 0.4 of 1 per centum by volume of oil of peppermint had been mixed and packed with the article of food aforesaid in such a manner as to reduce and lower and injuriously affect the quality and strength of the article. Adulteration was alleged for the further reason that oil of peppermint in the quantity of not less than 3 per centum by volume is an essential ingredient of the article of food known as peppermint essence, whereas a certain dilute essence of peppermint containing not more than 0.4 of 1 per centum by volume of oil of peppermint had been substituted wholly or in part for the aforesaid essential quantity of oil of peppermint in the article of food. Adulteration was alleged for the further reason that the article of food aforesaid had been colored in a manner

whereby its inferiority was concealed. Misbranding of the product was alleged for the reason that said article was an imitation of another article of food, to wit, genuine peppermint essence, in that oil of peppermint in the quantity of not less than 3 per centum by volume is an essential ingredient of the article of food known as genuine peppermint essence, whereas the article of food aforesaid consisted of a certain dilute peppermint essence containing not more than 0.4 of 1 per centum by volume of oil of peppermint. Misbranding was alleged for the further reason that the article consisted of a certain dilute solution of peppermint essence containing not more than, to wit, 0.4 of 1 per centum by volume of oil of peppermint, and was offered for sale, invoiced, sold, and delivered under the distinctive name of another article of food, to wit, genuine peppermint essence.

On December 15, 1913, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $100 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 14, 1914.*

**3336. Adulteration and misbranding of peppermint and ginger extracts. U. S. v. Adolph, Louis, and Walter F. Seidel (Royal Chemical Works). Plea of guilty. Fine, $100 and costs.** (F. & D. No. 3816. I. S. Nos. 12958-d, 12959-d.)

On August 4, 1913, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Adolph Seidel, Louis Seidel, and Walter F. Seidel, copartners, doing business as the Royal Chemical Works, Chicago, Ill., alleging shipment by said defendants, in violation of the Food and Drugs Act, on November 28, 1911, from the State of Illinois into the State of Ohio, of quantities of peppermint extract and ginger extract, which were misbranded. Analysis of a sample of the peppermint extract by the Bureau of Chemistry of this department showed the following results:

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|---|---|
| Specific gravity, 15.6° C | 0.9476 |
| Alcohol (per cent by volume) | 42.1 |
| Methyl alcohol: None. | |
| Oil (per cent by volume by precipitation) | 0.8 |
| Solids (grams per 100 cc) | 0.04 |
| Organoleptic test: Peppermint flavor. | |
| Color: Naphthol Yellow S. | |

Adulteration of the product was alleged in the information for the reason that oil of peppermint in the quantity of not less than 3 per centum by volume is an essential ingredient of the article of food known as peppermint extract, whereas a certain dilute extract of peppermint containing not more than 0.4 of 1 per centum by volume of oil of peppermint had been mixed and packed with the article of food aforesaid in such a manner as to reduce and lower and injuriously affect the quality and strength of the article of food aforesaid; and for the further reason that a certain dilute extract of peppermint containing not more than 0.4 of 1 per centum by volume of oil of peppermint had been substituted wholly and in part for the aforesaid essential quantity of oil of peppermint in the aforesaid article of food. Adulteration was alleged for the further reason that the article of food had been colored in a manner whereby its inferiority was concealed. Misbranding was alleged for the reason that the article of food aforesaid was an imitation of another article of food, to

wit, genuine peppermint extract, in that oil of peppermint in the quantity of not less than 3 per centum by volume is an essential ingredient of the article of food known as genuine peppermint extract, whereas the article of food aforesaid consisted of a certain dilute peppermint extract containing not more than 0.4 of 1 per centum by volume of oil of peppermint. Misbranding was alleged for the further reason that the article consisted of a certain dilute solution of peppermint extract consisting of not more than, to wit, 0.4 of 1 per centum by volume of oil of peppermint and was offered for sale, invoiced, sold, and delivered under the distinctive name of another article of food, to wit, genuine peppermint extract.

Analysis of a sample of the ginger extract by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Specific gravity at 15.6° C | 0.9372 |
| Alcohol (per cent by volume) | 47.7 |
| Methyl alcohol: None. | |
| Solids (grams per 100 cc) | 0.18 |
| Ginger, vanillin test: Positive. | |
| Capsicum, qualitative test: Negative. | |
| Organoleptic test: Ginger flavor. | |
| Color: Naphthol Yellow S., Amaranth. | |

Adulteration of this product was alleged in the information for the reason that a dilute solution of extract of ginger had been mixed and packed with the article of food aforesaid in such a manner as to reduce and lower and injuriously affect its quality and strength, and for the further reason that a certain substance, to wit, a dilute solution of extract of ginger had been substituted in part for the article of food aforesaid, and for the further reason that a certain substance, to wit, a dilute solution of extract of ginger had been substituted in part and wholly for the article. Adulteration was alleged for the further reason that the article of food had been colored in a manner whereby its inferiority was concealed.

On December 15, 1913, a plea of guilty was entered on behalf of the defendant firm, and the court imposed a fine of $100 and costs.

[While it was alleged in the information that the peppermint extract contained 0.4 per cent of oil of peppermint, it will be noted that the analysis indicated the presence of 0.8 per cent oil of peppermint.]

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 15, 1914.*

**3337. Adulteration and misbranding of Jamaica ginger. U. S. v. Victor Gautier & Co. Plea of guilty. Fine, $15.** (F. & D. No. 4218. I. S. No. 14895-d.)

At the March, 1914, term of the District Court of the United States for the Southern District of New York, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed an information against Victor Gautier & Co., a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on September 14, 1911, from the State of New York into the State of Tennessee, of a quantity of Jamaica ginger which was adulterated and misbranded. The product was labeled: "Ginger. Superfine Jamaica-type-Ginger drops compound. These goods are carefully compounded and prepared under the most modern and improved methods and are guaranteed by Victor Gautier & Co. Inc. New York, under the Food and Drugs Act, June 30, 1906. Serial No. 8115."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Specific gravity, 20°C./4°C | 0.9593 |
| Alcohol (per cent by volume) | 33.3 |
| Methyl alcohol: Absent. | |
| Coal tar color: Absent. | |
| Ginger (Seeker): Positive. | |
| Capsicum (La Wall & Nelson): Positive. | |
| Solids (per cent) | 0.40 |

Adulteration of the product was alleged in the information for the reason that a dilute solution of ginger and capsicum had been mixed and packed with said article so as to reduce and lower and injuriously affect its quality and strength; and further, for the reason that another substance, to wit, a dilute solution of ginger and capsicum had been substituted in part for the said article. Misbranding of the product was alleged for the reason that the words "Ginger" and Superfine Jamaica Ginger," on the label thereof, regarding said article and the ingredients and substances, were false and misleading in that the said words would indicate that the said article was Jamaica ginger. whereas, in truth and in fact, the said article was not Jamaica ginger, but was a dilute solution of ginger containing capsicum.

On April 13, 1914, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $15.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 15, 1914.*

**3338. Adulteration and misbranding of liqueur. U. S. v. E. G. Lyons & Raas Co. Plea of guilty as to first and third counts of information. Fine, $50. Sentence suspended as to second count.** (F. & D. No. 4252. I. S. No. 13047-d.)

At the March, 1914, term, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in three counts against E. G. Lyons & Raas Co., a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on December 7, 1911, from the State of New York into the State of Pennsylvania, of a quantity of liqueur which was adulterated and misbranded. The product was labeled: "E. G. Lyons & Raas Trademark. Established 1852, San Francisco-New York. Superfine Liqueur Leone Verdolino di Napoli. Artificially Colored. Cordial prepared with finest ingredients and guaranteed under Pure Food and Drugs Act, June 30, 1906. Serial No. 5408."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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|---|---|
| Ash (per cent) | 0.137 |
| Commercial glucose (per cent) | 6.93 |
| Alcohol (per cent by volume) | 21.74 |
| Methyl alcohol: None. | |
| Solids (grams per 100 cc) | 41.5 |
| Nonsugar solids (grams per 100 cc) | 3.0 |
| Sucrose (grams per 100 cc) | 1.31 |
| Reducing sugars before inversion as invert (grams per 100 cc) | 37.22 |
| Polarizations: | |
| At 20° C., direct (°V.) | +2.55 |
| At 20° C., invert (°V.) | + 0.8 |
| At 87° C., invert (°V.) | +11.3 |

Test for coal tar color: Positive.

Two colors were found, the reactions of which on wool correspond to those of Napthol Yellow S and Light Green SF Yellowish.

Iodin test for erythrodextrin: Positive.

Adulteration of the product was alleged in the first count of the information for the reason that there was mixed and packed in said article so as to reduce and lower its quality and strength another substance, to wit, glucose, and in that there was substituted in part for the genuine article another substance, to wit, glucose, which is not a normal ingredient of a cordial, which the article purported to be. Misbranding of the product was alleged in the second count of the information for the reason that the statement on the label thereof as follows, "Cordial prepared with finest ingredients," regarding the ingredients in said article, was false and misleading, in that said words would indicate that the best and finest ingredients were contained in said article, whereas, in truth and in fact, said article was prepared in part from glucose, which is not one of the best or finest ingredients of a cordial but was a much inferior ingredient. Misbranding was alleged in the third count of the information for the reason that the product was labeled so as to deceive and mislead the purchaser thereof, in that the statement on the label thereof as follows "Superfine Liqueur Leone Verdolino di Napoli," regarding the article, was false and misleading, in that said words would indicate that said article was a foreign product, to wit, a product of Italy, when it was not so, but was a product of the United States; and said article was further misbranded in that it purported to be a foreign product, to wit, a product of Italy, when it was not so, but was a product of the United States.

On March 27, 1914, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 each, on the first and third counts of the information, making a total fine of $50, and suspended sentence upon the second count of the information.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 15, 1914.*

**3339. Adulteration and misbranding of sorghum. U. S. v. 25 Cases of So-called Sorghum. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 4445. I. S. No. 37764–e. S. No. 1484.)

On August 21, 1912, the United States attorney for the Eastern District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 cases represented to contain sorghum remaining unsold in the original unbroken packages and in possession of B. L. Gordon and Co., Spokane, Wash., alleging that the product had been transported from the State of Missouri into the State of Washington, and charging adulteration and misbranding in violation of the Food and Drugs Act. Fifteen of the cases were labeled: "6 Cans No. 105 Pure Missouri Sorghum." Ten of the cases were labeled: "24 Cans No. 2–½ Pure Missouri Sorghum." The retail packages in the cases were labeled: "Pure Missouri Sorghum Canned by National Mfg. Co. St. Joseph, Mo." It was alleged in the libel that the sorghum was misbranded and adulterated in violation of the Act of Congress of June 30, 1906, and liable to condemnation and confiscable as provided therein, for the reason that said sorghum was not pure Missouri sorghum but contained 10 per cent of glucose, and the labeling of the said sorghum, so-called, was misleading and

false so as to deceive and mislead the purchaser and so as to offer the contents for sale under the name of another article, and was a misbranding within the meaning of the act.

On April 8, 1914, the cause having come on to be heard upon the libel and the answer filed by the said B. L. Gordon & Co., claimant, admitting the allegations in the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered and restored to said claimant upon payment of the costs of the proceedings and the execution of a good and sufficient bond in the sum of $200 in conformity with section 10 of the act.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *August 15, 1914.*

**3340. Misbranding of gin. U. S. v. The Mihalovitch Co. Plea of nolo contendere. Fine, $100 and costs.** (F. & D. No. 4508. I. S. No. 16056–d.)

On January 8, 1913, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district an information against the Mihalovitch Co., a corporation, Cincinnati, Ohio, alleging shipment by said company in violation of the Food and Drugs Act, on or about December 6, 1911, from the State of Ohio into the State of Indiana, of a quantity of gin which was misbranded. The product was labeled: (On cases) "James DeKompy & Zeter Brand Gin." (On retail packages) "Genuine Hollands Geneva Process James DeKompy & Zeter Brand Established 1854. (Sticker) Guaranteed by The Mihalovitch Co. under the National Food and Drugs Act, June 30, 1906."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results, expressed in parts per 100,000, 100° proof, unless otherwise noted:

| | |
|---|---|
| Proof (degrees) | 79.5 |
| Acids, total, as acetic | 3 |
| Esters, fixed, as acetic | 8.9 |
| Aldehydes, fixed, as acetic | 1.5 |
| Furfural | 0 |
| Fusel oil (Allen-Marquardt method) | 0 |

Misbranding of the product was alleged in the information for the reason that the label and brand on said article of food bore statements, to wit, "Genuine Hollands Geneva Process James DeKompy & Zeter Brand," and designs and devices regarding said article of food and the ingredients and substances contained therein, which said statements, designs, and devices were false, misleading, and deceptive in that they purported and represented said article of food to be genuine Holland gin, imported from Holland, whereas, in truth and in fact, said article of food was not a Holland gin, but was an ordinary gin of domestic origin and manufacture. Misbranding was alleged for the further reason that the article of food was labeled and branded as aforesaid so as to deceive and mislead the purchaser thereof in that by said label and brand said article of food purported and was represented to be a foreign product and of foreign origin and manufacture, said label and brand conveying the impression that said article of food was a Holland gin, whereas, in truth and in fact, said article of food was not a foreign product nor of Dutch origin and manufacture, but was a domestic product and of American origin and manufacture.

On April 7, 1914, the defendant company entered a plea of nolo contendere to the information and the court imposed a fine of $100 and costs of $16.20.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3341. Misbranding of coffee. U. S. v. Stewart Brown and William Harman, jr. (Fiske & Brown). Plea of guilty. Sentence suspended.** (F. & D. No. 4512. I. S. No. 15674–d.)

At the March, 1914, term of the District Court of the United States for the Southern District of New York, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in said court an information against Stewart Brown and William Harman, jr., doing business under the firm name and style of Fiske & Brown, New York, N. Y., alleging shipment by said defendants in violation of the Food and Drugs Act on April 4, 1912, from the State of New York into the State of Missouri, of a quantity of coffee which was misbranded. The product was labeled: "Java & Mocha from Fiske & Brown. Olive Oil, Coffees & Teas, 103 Water St., New York."

Examination of a sample of the product by the Bureau of Chemistry of this department showed that the package contained a blend of about three parts Padang, from the island of Sumatra, and about one part Mocha.

Misbranding of the product was alleged in the information for the reason that the words on the aforesaid label, "Java & Mocha," would indicate that the article was a coffee consisting in part of Java coffee, whereas in truth and in fact no Java coffee was present in said article, but said article consisted of about three parts Padang coffee and one part of Mocha coffee.

On March 26, 1914, a plea of guilty was entered on behalf of the defendant firm and the court suspended sentence.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3342. Misbranding of vinegar. U. S. v. 25 Barrels, and 25 Half Barrels; and U. S. v. 10 Barrels, and 10 Half Barrels of Vinegar. Product released on bond.** (F. & D. No. 4552. I. S. Nos. 3821–e, 3822–e. S. No. 1512.)

On September 21, 1912, the United States attorney for the Southern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 25 barrels and 25 half barrels, and 10 barrels and 10 half barrels of vinegar remaining unsold in the original unbroken packages at Huntington, W. Va., alleging that the product had been transported from the State of Ohio into the State of West Virginia, and charging misbranding in violation of the Food and Drugs Act. The 25 barrels and 25 half barrels were labeled: "Union Vinegar Co., Distributors, Colored Distilled Vinegar 40 Gr. Cincinnati, O. Made 2–3–12." The 10 barrels were labeled: "Old Kentucky Cider Vinegar Works—O. K.—Fermented Apple Product Vinegar Made by Fermentation, Covington, Ky. Fermented Apple Juice Pressed from Apple Waste Reduced to Legal Standard with Water." The 10 half barrels were labeled: "Old Kentucky Cider Vinegar Works O. K. Brand Fermented Apple Vinegar Made by Fermentation, Covington, Ky. Made 8–8–12 Reduced to 40 G. Guaranteed to comply with the Pure Food Law."

Misbranding of the 25 barrels and 25 half barrels was alleged in the libel, for the reason that said barrels and half barrels were branded as follows: That said barrels and each of them were branded and marked to contain the following quantities, that is to say, 2 barrels marked 46 gallons, 17 barrels marked 47 gallons, and 6 barrels marked 48 gallons, when, in truth and in fact, neither [none] of said barrels contained the quantity which was indicated to be therein by the markings, labels, and branding thereon, but each of said barrels was substantially short in quantity from [of] the amount indicated by the said labels and markings, the total shortage in said 25 barrels being 18 gallons, or 19.1 per cent; that said half barrels were branded and marked to

contain the following quantities, that is to say, each of said half barrels was marked to contain 32 gallons, when, in fact and in truth, neither [none] of said half barrels contained the quantity which was indicated to be therein by the markings, labels, and branding thereon, but each of said half barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, the total shortage in the said 25 half barrels being 11 gallons, or 16.9 per cent; that the labeling of said barrels and half barrels was misleading and false, so as to deceive and mislead the purchaser, and was a misbranding within the meaning of said act. It was further alleged in the libel that each of said 25 barrels and each of said 25 half barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, and said barrels and half barrels did not contain the amount of vinegar as [that] the markings would indicate. Misbranding of the 10 barrels and 10 half barrels was alleged for the reason that said barrels were branded and marked to contain the following quantities, that is to say, 1 barrel containing 48 gallons, 4 containing 49 gallons, 1 containing 50 gallons, 1 containing 51 gallons, 2 containing 52 gallons, and 1 containing 54 gallons, when, in truth and in fact, neither [none] of said barrels contained the quantities which were indicated to be therein by the markings, labels, and branding thereon, but each of said barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, the total shortage in said 10 barrels being 23 gallons, or 11.5 per cent; that the said half barrels were branded and marked to contain the following quantities, that is to say, each of said 10 half barrels was marked to contain 32 gallons, when, in truth and in fact, neither [none] of said half barrels contained the quantities which were indicated to be therein by the markings, labels, and branding thereon, but each of said half barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, the total shortage in the said 10 half barrels being 22 gallons, or 17.2 per cent; that the labeling of said barrels and half barrels was misleading and false, so as to deceive and mislead the purchaser, and was a misbranding within the meaning of said act. It was further alleged in the libel that each of said 10 barrels and 10 half barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, and said barrels and half barrels did not contain the amount of vinegar as [that] the markings would indicate. [The shortage of 18 gallons, or 19.1 per cent, was not in the 25 barrels of the product, but in 2 of the 25 barrels; the shortage of 11 gallons, or 16.9 per cent, was not in the 25 half barrels, but in 2 of the 25 half barrels; the shortage of 23 gallons, or 11.5 per cent, was not in the 10 barrels, but in 4 of the 10 barrels; and the shortage of 22 gallons, or 17.2 per cent, was not in the 10 half barrels, but in 4 of the 10 half barrels.]

On October 9, 1912, the cause having come on for a hearing upon the libel and upon the answer of the Union Vinegar Co., Cincinnati, Ohio, claimant, it was considered by the court that the product was misbranded within the meaning of the Food and Drugs Act and subject to seizure thereunder. The said Union Vinegar Co., by its answer having asked that it be allowed to give bond on condition that the vinegar should not be sold in violation of the Food and Drugs Act and to pay the costs of the proceeding and to have restored to it the product, and having tendered a bond for the performance of these conditions, and said bond having been approved, it was considered by the court that upon payment of the costs of the proceeding the product should be restored to said Union Vinegar Co.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3343. Adulteration and alleged misbranding of maple sugar. U. S. v. Huyler's. Tried to the court and a jury. Verdict of guilty on charge of adulteration. Verdict of not guilty on the charge of misbranding. Fine, $200.** (F. & D. No. 4603. I. S. No. 19843–d.)

On February 12, 1913, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the police court of said District an information against Huyler's, a body corporate doing business within the District of Columbia, alleging the sale by said defendant on April 17, 1912, at the District aforesaid, in violation of the Food and Drugs Act, of a quantity of maple sugar which was adulterated and alleged to have been misbranded. The product bore no label, but was sold as maple sugar.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Weight of cakes (grams) | 477 and 468 |
| Sample made to a sirup: | |
| Dry substance by refractometer (per cent) | 63.67 |
| Total ash (per cent) | 0.35 |
| Soluble ash (per cent) | 0.20 |
| Insoluble ash (per cent) | 0.15 |
| Winton lead number | 0.93 |
| Malic acid | 0.39 |

This could not be more than 85 per cent maple sugar.

Adulteration of the product was alleged in the first count of the information for the reason that it had been mixed and packed with another substance, to wit, cane sugar, which reduced and lowered its quality and strength. Misbranding was alleged in the second count of the information for the reason that the product was an imitation of and was offered for sale and sold under the distinctive name of another article of food, to wit, maple sugar.

On February 12, 1913, the case having come on for trial before the court and a jury, after submission of evidence and argument by counsel the following charge was delivered to the jury by the court (Mullowney, *J.*):

Gentlemen of the jury, this defendant is charged, in the information here under the act of Congress——

Mr. Boyesen. If your honor please, I have some requests for charges. May I make them after you charge? I should prefer to, because you may charge them, and then I shall not have to make them.

The Court (continuing). —in two counts. In the first count this defendant corporation is charged with selling this article of food—that is to say, a certain quantity of maple sugar—which said food was adulterated in that it had been mixed and packed with another substance, to wit, cane sugar, which reduced and lowered its quality and strength.

In the second count of the information, gentlemen, the defendant corporation is charged with selling this quantity of maple sugar, which was a food, misbranded, in that it was an imitation of and was offered for sale and was sold under the distinctive name of another article of food, to wit, maple sugar.

Now, gentlemen, each of these counts you will take and consider as separate cases, and it is your province, after you have investigated and gone over the evidence, to bring in a verdict either of not guilty or guilty as to both counts, or you can treat them as separate and bring in a verdict of not guilty as to one and guilty as to the other, or vice versa.

The act of Congress, gentlemen, reads: "The term 'food,' as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound."

There is no controversy in this case, gentlemen, but what this product, this article, was sold by this defendant corporation. But the questions that you are to determine, gentlemen, are, first, Was it adulterated in that it had been mixed and packed with another substance, to wit, cane sugar, which reduced and lowered its quality and strength, and, second, Was it sold in imitation of and offered for sale and sold under the distinctive name of another article of food?

Considering the first count of the information, gentlemen, the Government claims here that this inspector, passing along the street, saw a sign in the window labeled "Maple sugar." A short time after that he went into this store and asked an employee of this corporation for maple sugar; that he was sold the article in question, here in evidence, and received it as maple sugar; that he then and there asked for what he termed a bill of sale and was handed this receipt which is in evidence and which you gentlemen have seen.

Now, then, if you believe that to be a fact, from the evidence, gentlemen, and it turns out that the article which he received was not maple sugar but was an article containing partly cane sugar and partly maple sugar, and you believe from the evidence that the addition of this cane sugar injuriously affected the quality and strength of the article demanded by this purchaser, this inspector, and received by him from this defendant corporation, and you believe such to be the fact beyond any reasonable doubt after you have considered all the evidence in the case, it would be your duty to convict this defendant.

But the defendant claims that they had no such sign in the window as the inspector swears to. That is their claim. They also claim that when a demand was made by this inspector for maple sugar he did not ask for maple sugar, but he asked for maple-sugar candy, and that when it was handed to him it was handed to him as maple-sugar candy and not as maple sugar.

If you believe that to be a fact, gentlemen—and this inspector received this article believing at the time, from the statements made by these people, that he was not receiving maple sugar but he was receiving maple-sugar candy, a preparation made up by this defendant corporation and sold to him as candy—then, gentlemen, if you believe that to be the fact—that it was not an article mixed and packed with this cane sugar, which reduced and lowered its quality and strength—and if you have a reasonable doubt of that, gentlemen, after you have heard all the facts in the case and considered it, it would be your duty to give it the benefit of it and acquit the defendant on the first count of the information.

* * * * * * *

The COURT. Gentlemen, after you have considered all the evidence offered by the Government then you are to take into consideration the evidence offered by this defendant; and, if that raises a reasonable doubt in your mind, then you are to give the defendant the benefit of it and acquit it, and not in regard to the evidence offered by the Government alone.

Mr. BOYESEN. That is to say, our evidence does not require to raise anything more than a reasonable doubt.

The COURT. That is it. The Government must prove their case beyond a reasonable doubt.

In regard to the second count of the information, gentlemen, the claim of the Government is that this inspector, at the time he received the article, received it as maple sugar, and received this receipt, which he termed a bill of sale, and that he made a demand for maple sugar and received this package as maple sugar, and received this bill marked "Maple sugar cakes."

The defendant, though, claims, gentlemen, that that was received by him in connection with the statements of the employees; that is, that he did not demand maple sugar, but he demanded maple-sugar candy. Now, then, you will have the right, therefore, in considering whether this article was an imitation of the distinctive name, maple sugar, to take this label and to take these statements of these clerks that it was sold to him as maple-sugar candy. Or, in other words, I charge you, gentlemen, that you ought not to take this receipt alone, because it was not put on and wrapped with the package, but it was received by this prosecuting witness or the inspector, when he made the demand for it; therefore I charge you to take into consideration, in determining this evidence, the statements of the clerks that they sold it to him as maple-sugar candy. So that, then, if you take the consideration of those statements of the clerk and this label or receipt with the statement that it was sold as maple-sugar candy, and you have a reasonable doubt of it, you are to give this defendant the benefit of it and acquit it.

Now, gentlemen, this defendant corporation comes into this court with the presumption of innocence, and it is your duty to give it the benefit of it, and it is entitled to have this case proven to you beyond all reasonable doubt after you have considered all the evidence in the case, and, as I have stated to you, if you have a reasonable doubt, it is your duty to give it the benefit of it, and you should acquit.

Is there anything else you gentlemen wish?

Mr. SMITH. We have no requests.

Mr. BOYESEN. I want first to except to so much of your honor's charge as intimates that there might, under any circumstances, be a branding through the delivery to the Government's inspector of a bill as a wholly and separate and distinct transaction from the delivery and payment for the product, and to request your honor to charge that it affirmatively appears as a matter of law that there was no branding of the package of goods in question whatever, and that, there having been no branding, there could be no misbranding.

The COURT. All right; you can take an exception to that.

Mr. BOYESEN. I except.

I will ask your honor to charge the jury that upon the first count of the information, charging adulteration, there is no ingredient contained in the defendant's product prohibited by the Food and Drugs Act. That is to say, there was no terra alba, barytes, talc, or any other prohibited ingredient, and that the confectioner, as a matter of right and as a matter of law, has the right to make confectionery according to his own formula, unless the prohibited ingredients are contained.

The COURT. I shall refuse that as not germane to the case. There is no testimony here in regard to it. There is no ingredient of that kind in it.

Mr. BOYESEN. It has been stated that in this product which is in question here there are two ingredients—maple sugar and cane sugar.

The COURT. Yes.

Mr. BOYESEN. And I requested your honor to charge this jury that a formula calling for cane sugar and maple sugar for confectionery is perfectly legal for confectionery.

The COURT. Well, I will let you have an exception to that. There is no proof in regard to the matter to sustain that prayer.

Mr. BOYESEN. I will ask your honor to charge that it is permissible, in the ordinary trade, in confectionery, so far as anything appears in the evidence to the contrary, to compound an article consisting of maple sugar and cane sugar and to sell the same as confectionery.

That is in line with the notice of judgment No. 1803, to which I called your honor's attention.

The COURT. I think I have covered that. I think I told the jury in my charge if they believed from this evidence that if when he came in there he demanded maple-sugar candy and received it as such it was not a violation at all, therefore it was not an article sold in imitation of another article, nor was it sold as an article which reduced or lowered its strength or quality. I think I told the jury that.

Mr. BOYESEN. I am speaking now of the make-up of the article.

The COURT. You may have an exception.

Mr. BOYESEN. I will ask your honor to charge that the jury is entitled, on the question of guilt or innocence of the defendant, to consider that the defendant is a manufacturer of confectionery only and beverages, and not of foods; that it has not advertised in any manner that it sells anything except confectionery and beverages, and that should be taken into consideration by them upon the question of whether any reasonable member of the public should be deceived under the circumstances, and further to take into consideration the fact that the size of the cake was not the usual size in which maple sugar is put up.

The COURT. I will give you an exception.

Mr. BOYESEN. I ask your honor to charge the jury as a matter of law that the article in question here was not sold under the distinctive name of another article.

The COURT. I will give you an exception.

Mr. BOYESEN. I will ask your honor to charge that if any violation of the law was made under the second count by the defendant the transaction was complete when the goods were delivered, and payment therefor was received, and that they are not entitled to take into consideration in any manner the fact that the Government inspector thereafter, when the transaction was complete, asked for a receipted bill and that they are not entitled to take into consideration anything written upon the face of that bill.

The COURT. You may have an exception to that.

Mr. BOYESEN. I will ask your honor to instruct the jury that they are to draw no inference whatever, favorable or unfavorable to the defendant, from your honor's refusal to charge as requested.

The COURT. Yes.

Gentlemen, you are to take no consideration of the refusal or granting of any of these prayers of counsel or any statements made by the court in regard to the offer of prayers.

Mr. BOYESEN. Those that are granted they are to consider, of course, your honor.

The COURT. Oh, yes.

Take the case, gentlemen.

Thereupon the jury retired and after due deliberation returned into court with a verdict of guilty as to the charge of adulteration and not guilty as to the charge of misbranding. The defendant company then gave notice of the filing of a motion for a new trial and in arrest of judgment, and on February 17, 1913, said motion was filed. On March 7, 1913, this motion, having come on for hearing, was argued and overruled, and the court imposed a fine of $200. Exceptions were taken to the rulings of the court on matters of law and notice was given by the defendant in open court of an intention to apply to a justice of the Court of Appeals of the District of Columbia for a writ of error. On March 19, 1913, the defendant company filed its petition for the allowance of a writ of error with its bill of exceptions to said Court of Appeals of the District of Columbia, and on April 7, 1913, the petition for the writ of error was denied.

On June 6, 1913, the defendant company filed in the Supreme Court of the District of Columbia, holding an equity court, a bill for injunction against David F. Houston, Secretary of Agriculture, praying that an order might issue temporarily restraining and enjoining said Secretary of Agriculture from the publication of the notice of judgment against the said Huyler's in relation to the fine imposed by the police court of the District aforesaid, and that on final hearing said order might be made permanent, and on said date a rule was allowed by the court that the Secretary of Agriculture should show cause why the writ of injunction should not issue as prayed; and on June 13, 1913, an answer to the rule to show cause and a demurrer to the bill of complaint were filed on behalf of the Secretary of Agriculture. On June 25, 1913, the cause having come on to be heard in the said Supreme Court of the District of Columbia upon the bill of complaint and rule to show cause issued thereon and the answer to said rule to show cause and demurrer to said bill of complaint, after argument by counsel and consideration by the court, it was ordered, adjudged, and decreed that the said rule to show cause be discharged and that the demurrer to the bill of complaint be sustained and that said bill of complaint be dismissed with costs. The said Huyler's appealed from this order in open court; and bond for costs was fixed at $100, and bond to act as supersedeas at $5,000. The following opinion, preliminary to the issuance of the foregoing order, was rendered by the court (Anderson, *J.*):

This is a bill for injunction to restrain the Secretary of Agriculture from publishing, pursuant to section 4 of the "Food and Drugs Act" of June 30, 1906, notice of a certain judgment of the police court of the District of Columbia imposing a fine of $200 upon the plaintiff in case No. 185115 charging him with offering for sale, and selling, an adulterated article of food to one Rodney A. Griffin.

The plaintiff contended in the police court that that court had no jurisdiction over the alleged offense, because the act of Congress (sec. 5) provides for prosecutions "in the proper courts of the United States," thereby meaning, it was claimed by the plaintiff, only constitutional courts of the United States. The police court, however, overruled the objection, and held that the act meant all legislative courts of the United States. A writ of error to the Court of Appeals was subsequently applied for, but denied.

This suit has, accordingly, been brought to obtain relief against the irreparable injury which, it is contended, will result from the publication by the defendant under said act of notice of said judgment. The case is now before the court upon the defendant's answer to the rule to show cause and also upon the defendant's demurrer to the bill.

QUESTION FOR DECISION.

The sole question for determination herein is one of law, namely, whether Congress intended by the use of the words "in the proper courts of the United States" in this statute to include the police court of the District of Columbia.

In United States *v.* Mills, 11 App. D. C. 500, 507, it was said:

"When there is mention of the courts of the United States in any statute, we may conclusively assume that only the courts of general jurisdiction intended by the Constitution are meant, unless there is special reason to be deduced from the context of the statute for giving to the expression a different meaning."

In the act under consideration the language, it is to be noted, is "the proper courts of the United States," and this language would seem to clearly import that all courts exercising the criminal jurisdiction of the United States, in so far as the penalties prescribed by the act come within their statutory jurisdiction, should have cognizance of these offenses. That the penalties for a first offense under this act come within the statutory jurisdiction of the police court is unquestioned.

It follows from what has been already said that the rule to show cause must be discharged, and the demurrer to the bill sustained, and the bill dismissed.

On August 6, 1913, assignments of error in support of the appeal from the action of the Supreme Court of the District of Columbia were filed, and on September 2, 1913, transcript of record was received and filed in the Court of Appeals of the District of Columbia. On January 6, 1914, the case came on for argument before the court, and on February 2, 1914, the decree of the lower court was affirmed by said Court of Appeals of the District of Columbia, with costs, as will more fully appear from the following opinion by the court (Robb, *J.*):

This is an appeal from a decree o. the Supreme Court of the District sustaining appellee's demurrer and dismissing appellant's bill for an injunction to restrain the appellee, the Secretary of Agriculture, from publishing, pursuant to section 4 of the so-called Food and Drugs Act of June 30, 1906 (34 Stat., 768), notice of a judgment in the police court of the District of Columbia imposing a fine of $200 upon appellant after conviction of the offense of offering for sale and selling an adulterated article of food.

Section 4 of said act provides that a chemical examination of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of that bureau, for the purpose of determining whether such articles be adulterated or misbranded within the meaning of the act, and if the result of that examination shows adulteration or misbranding it is made the duty of the Secretary to notify the party from whom the sample was obtained. Thereupon the party so notified is given an opportunity to be heard, and if, after hearing, it appears that any of the provisions of the act have been violated by such party it is made the duty of the Secretary at once to "certify the facts to the *proper United States district attorney*, with a copy of the result of the analysis or examination of such article duly authenticated by the analyst or officer making such examination under the oath of such officer. *After judgment of the court, notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid.*"

Section 5 of the act makes it the duty of each district attorney to whom such a violation shall be reported by the Secretary, "or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of such violation, to cause appropriate proceedings to be commenced and prosecuted in the *proper court of the United States* without delay for the enforcement of the penalties herein provided."

Appellant was duly convicted in the police court of the District of Columbia and fined $200 for offering for sale and selling adulterated maple sugar. It is the contention of the appellant that the police court is not a "proper court of the United States" within the meaning of said section 5 of the Food and Drugs Act, and hence that the judgment of that court is absolutely void. This contention is easily met. Section 43 of the code confers upon the police court original jurisdiction concurrently with the Supreme Court of the District,

except where otherwise therein provided, "of all crimes and offenses committed in the said District not capital or otherwise infamous and not punishable by imprisonment in the penitentiary, except libel, conspiracy, and violations of the post office and pension laws of the United States." The charge upon which appellant was prosecuted, being a first offense, where the punishment may not exceed a fine of $200, was therefore within the jurisdiction of the police court. That the police court is a court of the United States, although not in the sense of the Constitution, has already been determined. United States *v.* Mills (11 App., D. C., 500). The question here is not whether the police court is a court of the United States in the constitutional sense, but whether it is a "proper court of the United States" within the meaning of the Food and Drugs Act. All other pettty offenses against the United States, except those expressly reserved from its jurisdiction, are triable in that court, and no reason is perceived why one accused of adulterating food in this District is entitled to treatment different than would be accorded him if accused of some other petty offense against the laws of the United States. When, therefore, Congress used the words "in the proper courts of the United States," we think it clear that it meant in the courts having jurisdiction of similar offenses. The police court was therefore a proper court within the meaning of this section.

Decree affirmed with costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3344. Alleged adulteration of milk. U. S. v. John W. Hart. Tried to the court and jury. Verdict of not guilty.** (F. & D. No. 4634. I. S. Nos. 5426-d, 5427-d.)

On November 4, 1912, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against John W. Hart, of Pennington, N. J., alleging shipment by said defendant in violation of the Food and Drugs Act on June 7, 1912, from the State of New Jersey into the State of Pennsylvania, of a quantity of milk which was adulterated. The cans containing the product were marked "John W. Hart, Pennington, N. J."

Analysis of samples of the product by the Bureau of Chemistry of this department showed the following results:

| Determination. | Sample No. 1. | Sample No. 2. |
|---|---|---|
| Fat (per cent) | 3.60 | 2.86 |
| Total solids by drying (per cent) | 11.73 | 12.14 |
| Solids not fat (per cent) | 8.13 | 9.28 |
| Ash (per cent) | .66 | .73 |
| Specific gravity at 60° F | 1.0292 | 1.0342 |
| Nitrates | Present. | Negative. |

It was alleged in the information that the product was adulterated in that, being an article used for food by man, a substance, to wit, water, had been mixed and packed with it so as to wholly reduce and lower and injuriously affect its quality and strength; and said article was further adulterated in that the same contained a substance, to wit, water, which had been substituted wholly for the said article of food; and was further adulterated in that a valuable constituent, to wit, fat, had been wholly abstracted and left out. It was further alleged in the second count of the information that the product was adulterated in that being an article used for food by man as aforesaid, a substance, to wit, water, had been mixed and packed with it so as to partly reduce and lower and injuriously affect its quality and strength; and said article was further adulterated in that the same contained a substance, to wit,

water, which had been substituted in part for the said article of food; and said article was further adulterated in that a valuable constituent, to wit, fat, had been partly abstracted and left out.

On March 17, 1914, the case having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the case was given to the jury, and, after due deliberation, a verdict of not guilty was returned by said jury.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3345. Adulteration and misbranding of Hillis Golden Cereal. U. S. v. Hillis Cereal Manufacturing Co. Plea of guilty. Sentence suspended.** (F. & D. No. 4724. I. S. No. 15935-d.)

On February 6, 1914, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Hillis Cereal Manufacturing Co., a corporation, Brooklyn, N. Y., alleging shipment by said company in violation of the Food and Drugs Act, on or about January 2, 1912, from the State of New York into the State of Washington, of a quantity of food product called Hillis Golden Cereal which was adulterated and misbranded. The product was labeled: (On sack) "Hillis Golden Cereal Hillis Cereal Manufacturing Co."

Examination of a sample of the product by the Bureau of Chemistry of this department showed it to consist of a mixture of roasted pea or bean hulls, fragments of roasted peas or beans, and 20 to 40 per cent of a roasted cereal, probably wheat.

Adulteration of the product was alleged in the information for the reason that it contained a substance and [or(?)] substances which had been substituted wholly or in part for the cereal which the said article purported to be, to wit, roasted pea and [or(?)] bean hulls and fragments of roasted peas and [or(?)] beans. Misbranding was alleged for the reason that the statement "Hillis Golden Cereal," borne on the label of the product, was false and misleading, in that said statement on the label purported that said product [contained(?)] was a cereal product and deceived and misled the purchaser into the belief that the product [contained(?)] was a cereal product, whereas, in truth and in fact, the said product [contained(?)] was not a cereal product, but was a mixture of cereal, pea and [or(?)] bean hulls and fragments of roasted peas and [or(?)] beans.

On February 26, 1914, the defendant company entered a plea of guilty to the information and the court suspended sentence.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914*

**3346. Adulteration and misbranding of scuppernong and sauterne wines. U. S. v. A. Schmidt Jr. & Bros. Wine Co. Plea of nolo contendere. Fine, $100 and costs.** (F. & D. Nos. 4725, 4834, 4868, 4957, 5006. I. S. Nos. 22810-d, 6160-d, 2409-e, 36503-e, 2411-e.)

On April 7, 1913, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the A. Schmidt jr. & Bros. Wine Co., a corporation, Sandusky, Ohio, alleging shipment by said company in violation of the Food and Drugs Act:

(1) On or about March 26, 1912, from the State of Ohio into the State of Indiana, of a quantity of so-called scuppernong wine which was adulterated

and misbranded. The product was labeled: (Main label on bottle) (Picture of eagle) "Ohio Golden Eagle Scuppernong Wine The A. Schmidt Jr. and Bros. Wine Co., Sandusky, O." (Neck label) (Picture of eagle) "Ohio Golden Eagle." Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Specific gravity | 1.0763 |
| Alcohol (per cent by volume) | 14.26 |
| Total solids (grams per 100 cc) | 24.57 |
| Sugar-free solids (grams per 100 cc) | 2.76 |
| Reducing sugar before inversion (grams per 100 cc) | 21.70 |
| Sucrose | 0.0 |
| Total acid as tartaric (grams per 100 cc) | 0.664 |
| Fixed acid as tartaric (grams per 100 cc) | 0.439 |
| Volatile acid as acetic (grams per 100 cc) | 0.180 |
| Total tartaric acid (grams per 100 cc) | 0.180 |
| Free tartaric acid | 0.0 |
| Cream of tartar (grams per 100 cc) | 0.214 |
| Tartaric acid to alkaline earths (grams per 100 cc) | 0.010 |
| Polarization, direct, at 20° C. (°V.) | —6.4 |
| Polarization, invert, at 20° C. (°V.) | —6.8 |
| Polarization, invert, at 87° C. (°V.) | 0.0 |
| Ash (grams per 100 cc) | 0.198 |
| Alkalinity water-soluble ash (cc N/10 HCl per 100 cc) | 11.4 |
| Alkalinity water-insoluble ash (cc N/10 HCl per 100 cc) | 8.0 |
| Sodium oxid ($Na_2O$) (grams per 100 cc) | 0.0224 |
| Potassium oxid ($K_2O$) (grams per 100 cc) | 0.0678 |
| Chlorin (Cl) (grams per 100 cc) | 0.0309 |

Adulteration of the product was alleged in the information for the reason that a wine produced from grapes other than scuppernong, and sugar and water, prepared in imitation of true scuppernong wine, had been substituted wholly or in part for the said scuppernong wine which the article purported to be. Misbranding of the product was alleged for the reason that the statement on the label thereof, "Scuppernong Wine," was false and misleading in that it conveyed the impression that the product was prepared from scuppernong grapes, whereas, in fact, the same was prepared from grapes other than scuppernong, together with sugar and water, and for the further reason that said product was an imitation of and was sold under the distinctive name of another article, to wit, scuppernong wine; and for the further reason that said article was labeled and branded so as to deceive and mislead the purchaser into the belief that the same was true scuppernong wine prepared from grapes of that name, whereas the same was an imitation article prepared from grapes other than scuppernong, together with sugar and water.

(2) On or about May 1, 1912, from the State of Ohio into the State of Kentucky, of a quantity of so-called scuppernong wine which was adulterated and misbranded. The product was labeled: "Ohio Golden Eagle Scuppernong Wine. The A. Schmidt Jr. and Bros. Wine Co., Sandusky, O." Analysis of a sample of the product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Specific gravity | 1.0777 |
| Alcohol (per cent by volume) | 13.70 |
| Solids (grams per 100 cc) | 24.78 |
| Nonsugar solids (grams per 100 cc) | 2.60 |
| Sucrose by copper (grams per 100 cc) | 0.17 |
| Reducing sugar invert (grams per 100 cc) | 22.01 |

| | |
|---|---|
| Polarization, direct, at 20° C. (°V.) | —6.3 |
| Polarization, invert, at 20° C. (°V.) | —6.5 |
| Polarization, invert, at 87° C. (°V.) | 0.0 |
| Ash (grams per 100 cc) | 0.192 |
| Alkalinity soluble ash (cc N/10 NaOH per 100 cc) | 12.4 |
| Alkalinity insoluble ash (cc N/10 NaOH per 100 cc) | 10.8 |
| Acids as tartaric (grams per 100 cc) | 0.636 |
| Total tartaric acid (grams per 100 cc) | 0.172 |
| Free tartaric acid | 0.0 |
| Cream of tartar (grams per 100 cc) | 0.22 |
| Alkaline earths | 0.0 |
| Chlorin (Cl) (grams per 100 cc) | 0.0258 |

Adulteration of the product was alleged in the information for the reason that a substance, to wit, wine or wines other than scuppernong wine, had been substituted wholly or in part for scuppernong wine, which the article purported to be. Misbranding of the product was alleged for the reason that the statement "Scuppernong Wine," borne on the label, was false and misleading, in that it conveyed the impression that it was genuine scuppernong wine, whereas, in truth and fact, it was composed of a wine or wines other than scuppernong wine; and for the further reason that said product was labeled and branded so as to deceive and mislead the purchaser, being labeled "Scuppernong Wine," whereas, in truth and in fact, said product was not a scuppernong wine, but was composed of a wine or wines other than scuppernong wine.

(3) On or about May 1, 1912, from the State of Ohio into the State of Kentucky, of a quantity of so-called sauterne wine which was adulterated and misbranded. The product was labeled: (Principal label) "Ohio Golden Eagle Sauterne Wine. The A. Schmidt Jr. and Bros. Wine Co.. Sandusky, O." Shoulder label) "Ohio Golden Eagle." Analysis of a sample of the product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Specific gravity | 1.0317 |
| Alcohol (per cent by volume) | 13.12 |
| Solids (grams per 100 cc) | 12.58 |
| Nonsugar solids (grams per 100 cc) | 2.41 |
| Reducing sugar, invert (grams per 100 cc) | 10.07 |
| Polarization, direct, at 20° C. (°V.) | —3.0 |
| Polarization, invert, at 20° C. (°V.) | —3.1 |
| Polarization, invert, at 87° C. (°V.) | 0.0 |
| Ash (grams per 100 cc) | 0.192 |
| Alkalinity soluble ash (cc N/10 acid per 100 cc) | 11.4 |
| Alkalinity insoluble ash (cc N/10 acid per 100 cc) | 12.0 |
| Acid as tartaric (grams per 100 cc) | 0.630 |
| Volatile acid as acetic (grams per 100 cc) | 0.155 |
| Fixed acid as tartaric (grams per 100 cc) | 0.436 |
| Total tartaric acid (grams per 100 cc) | 0.172 |
| Free tartaric acid | 0.0 |
| Cream of tartar (grams per 100 cc) | 0.21 |
| Tartaric acid to alkaline earths | 0.0 |
| Chlorin (Cl) (grams per 100 cc) | 0.0256 |

Adulteration of the product was alleged in the information for the reason that a substance, to wit, pomace wine, sweetened and flavored, had been substituted wholly or in part for sauterne wine, which the article purported to be. Misbranding of the product was alleged for the reason that the statement "Sau-

terne Wine," borne on the label, was false and misleading, in that it conveyed the impression that the product was genuine sauterne wine, when, as a matter of fact, it was not such, but was a pomace wine, sweetened and flavored; and for the further reason that said product was labeled and branded so as to deceive and mislead the purchaser, being labeled "Sauterne Wine," when, as a matter of fact, it was not sauterne wine, but a pomace wine, sweetened and flavored.

(4) On or about May 7, 1912, from the State of Ohio into the State of Missouri, of a quantity of so-called scuppernong wine which was adulterated and misbranded. The product was labeled: (Principal label) "Ohio Golden Eagle Scuppernong Wine The A. Schmidt Jr. & Bros. Wine Co, Sandusky, O." (On sticker) "Ohio Golden Eagle." (On cap) "Golden Eagle Wine Co., Sandusky, Ohio." (Neck label) "Golden Eagle." Analysis of a sample of the product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Specific gravity | 1.0768 |
| Alcohol (per cent by volume) | 14.24 |
| Total solids (grams per 100 cc) | 24.70 |
| Sugar-free solids (grams per 100 cc) | 2.74 |
| Reducing sugar, before inversion (grams per 100 cc) | 22.00 |
| Sucrose (grams per 100 cc) | 0.00 |
| Total acid as tartaric (grams per 100 cc) | 0.680 |
| Fixed acid as tartaric (grams per 100 cc) | 0.465 |
| Volatile acid as acetic (grams per 100 cc) | 0.156 |
| Total tartaric acid (grams per 100 cc) | 0.191 |
| Free tartaric acid | 0.00 |
| Cream of tartar (grams per 100 cc) | 0.238 |
| Tartaric acid to alkaline earths | 0.00 |
| Polarization, direct, at 20° C. (°V.) | —7.6 |
| Polarization, invert, at 20° C. (°V.) | —7.4 |
| Polarization, invert, at 87° C. (°V.) | 0.0 |
| Ash (grams per 100 cc) | 0.188(?) |
| Alkalinity water-soluble ash (cc N/10 HCl per 100 cc) | 10.0 |
| Alkalinity water-insoluble ash (cc N/10 HCl per 100 cc) | 8.0 |
| Sodium oxid ($Na_2O$) (grams per 100 cc) | 0.0200 |
| Potassium oxid ($K_2O$) (grams per 100 cc) | 0.0608 |
| Chlorin (Cl) (grams per 100 cc) | 0.0238 |

Adulteration of the product was alleged in the information for the reason that a substance, to wit, an imitation scuppernong wine, had been substituted wholly or in part for the genuine article. Misbranding of the product was alleged for the reason that the statement "Golden Eagle Scuppernong Wine," borne on the label, was false and misleading, in that it created the impression that the product was genuine scuppernong wine, a wine prepared from scuppernong grapes, whereas, in truth and in fact, it was not genuine scuppernong wine, but an imitation scuppernong wine. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser, being labeled "Golden Eagle Scuppernong Wine," thereby creating the impression that the product was a genuine scuppernong wine prepared from scuppernong grapes, whereas, in truth and in fact, it was an imitation scuppernong wine.

(5) On or about May 23, 1912, from the State of Ohio into the State of Minnesota, of a quantity of so-called scuppernong wine, which was adulterated and misbranded. The product was labeled: (Principal label on bottle) "Ohio Golden Eagle Scuppernong Wine The A. Schmidt Jr. and Bros. Wine Co. Sandusky, O." (On neck of bottle) "Ohio Golden Eagle," (Tin foil capsule

over cork) "Golden Eagle—Golden Eagle Wine Co.—Sandusky, Ohio." Analysis of a sample of the product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Specific gravity | 1.0764 |
| Alcohol (per cent by volume) | 14.33 |
| Solids (grams per 100 cc) | 24.62 |
| Nonsugar solids (grams per 100 cc) | 3.22 |
| Reducing sugar, before inversion (grams per 100 cc) | 21.52 |
| Sucrose by copper | 0.0 |
| Polarization, direct, at 20° C. (°V.) | —26.0 |
| Polarization, invert, at 20° C. (°V.) | —26.4 |
| Polarization, invert, at 87° C. (°V.) | 0 |
| Ash (grams per 100 cc) | 0.205 |
| Alkalinity soluble ash (grams per 100 cc) | 14.0 |
| Alkalinity insoluble ash (grams per 100 cc) | 9.4 |
| Acid as tartaric (grams per 100 cc) | 0.638 |
| Volatile acid as acetic (grams per 100 cc) | 0.151 |
| Fixed acid as tartaric (grams per 100 cc) | 0.449 |
| Total tartaric acid (grams per 100 cc) | 0.192 |
| Free tartaric acid | 0.0 |
| Cream of tartar (grams per 100 cc) | 0.241 |
| Tartaric acid to alkaline earths | 0 |
| Chlorin (Cl) (grams per 100 cc) | 0.0207 |

Adulteration of the article was alleged in the information for the reason that a product made in whole or in part from wine or wines other than scuppernong wine, sweetened, flavored, and mixed in imitation of scuppernong wine, had been substituted wholly or in part for genuine scuppernong wine, which the article purported to be. Misbranding of the product was alleged for the reason that the statement "Scuppernong Wine," borne on the label, was false and misleading, in that it conveyed the impression that the product was genuine scuppernong wine, whereas, in truth and in fact, it was a product prepared in whole or in part from wine or wines other than scuppernong wine, sweetened, flavored, and mixed in imitation of scuppernong wine. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser, being labeled "Scuppernong Wine," when, as a matter of fact, it was not such, but was a product prepared in whole or in part from wine or wines other than scuppernong wine, sweetened, flavored, and mixed in imitation of scuppernong wine.

On February 3, 1914, the defendant company entered a plea of nolo contendere to the information and the court imposed a fine of $100 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3347. Misbranding of "Gran Liquore Della Stella." U. S. v. Guiseppe Citro and Joachim A. Castagna (G. Citro & Co.). Plea of non vult. Fine, $25.** (F. & D. No. 4846. I. S. No. 19080-d.)

On April 9, 1913, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Guiseppe Citro and Joachim A. Castagna, doing business as G. Citro & Co., Hoboken, N. J., alleging shipment by said defendants in violation of the Food and Drugs Act, on

or about August 5, 1911, from the State of New Jersey into the State of Pennsylvania, of a quantity of a product called "Gran Liquore Della Stella" which was misbranded. The bottles containing the product were labeled: (Neck label) "Stomachic digestive." Imprint in glass of sun with paster label in center with the words, "Marca Di Fabrica De Positata," and a foreign coat of arms. (Principal label) "Gran Liquore Della Stella" (foreign coat of arms and coat of arms with several gold medals) "Elixir Tonico Stomatico."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Alcohol (per cent by volume) | 31.00 |
| Methyl alcohol: None. | |
| Solids (grams per 100 cc) | 22.21 |
| Nonsugar solids: Practically none. | |
| Sucrose (grams per 100 cc) | 22.16 |
| Reducing sugars direct (grams per 100 cc) | 0.15 |
| Ash (grams per 100 cc) | 0.010 |

Test for coal tar color: Positive; the color is Naphthol Yellow S.

Misbranding of the product was alleged in the information for the reason that the statements "Marca Di Fabrica De Positata," "Gran Liquore Della Stella," "Elixir Tonico Stomatico," together with a device on the label of each of the bottles representing a foreign coat of arms and medals, were false and misleading, because they created the impression that the said liquor was a foreign product, when, in truth and in fact, it was manufactured in the United States and therefore the said liquor was falsely branded as to the country in which it was manufactured. Misbranding was alleged for the further reason that said liquor was labeled and branded so as to deceive and mislead the purchaser, the said product being labeled "Stomachic-digestive. Marca Di Fabrica De Positata. Gran Liquore Della Stella Elixir Tonico Stomatico," and branded with a foreign coat of arms and several gold medals, thereby creating the impression that the product was of foreign origin, whereas, in truth and in fact, the said product was manufactured in the United States, and therefore, said liquor was falsely branded as to the country in which it was manufactured. Misbranding was alleged for the further reason that said liquor purported to be a foreign product, whereas, in truth and in fact, it was not a foreign product, the statements "Stomachic-digestive," "Marca Di Fabrica De Positata," "Gran Liquore Della Stella," "Elixir Tonico Stomatico," together with the device of a foreign coat of arms and several gold medals on the labels, being such as to convey the impression that said liquor was a product of Italy, when, in truth and in fact, the said liquor was not a product of Italy but a product of the United States. Misbranding was alleged for the further reason that in being a drug as well as a food the said liquor contained alcohol but the package containing said liquor failed to bear a statement on the label of the quantity or proportion of such alcohol contained therein.

On March 17, 1914, the defendant Castagna retracted his plea of not guilty theretofore entered and entered a plea of non vult, and the court imposed a fine of $50, which was later remitted to a fine of $25. The defendant Citro died before the case was terminated.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3348. Adulteration and misbranding of peppermint extract. U. S. v. Victor Gautier & Co. Plea of guilty. Fine, $15.** (F. & D. No. 5099. I. S. No. 14894-d.)

At the March, 1914, term of the District Court of the United States for the Southern District of New York, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in said court an information against Victor Gautier & Co., a corporation, New York, N. Y., alleging the sale by said defendant, on September 10, 1911, under a guaranty to the effect that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act of June 30, 1906, of a quantity of peppermint extract which was so adulterated and misbranded and which said article, on September 10, 1911, was shipped in interstate commerce by the purchaser thereof, from the State of New York into the State of Tennessee, in violation of the Food and Drugs Act. The product was labeled "Peppermint. Superfine Peppermint."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results: Oil, 0.2 per cent; capsicum, present; coal tar color, Naphthol Yellow S. Analysis showed the product to be a very dilute solution of peppermint oil reinforced with capsicum.

It was alleged in the information that the article, at the time of purchase from said defendant and at the time of shipment of the same in interstate commerce, was adulterated in that there was mixed and packed in said article, so as to reduce and lower and injuriously affect its quality and strength, another substance, to wit, a dilute alcoholic solution containing traces of peppermint oil, reinforced with capsicum and artificially colored. Misbranding was alleged for the reason that the label aforesaid, regarding said article and the ingredients and substances contained therein, was false and misleading in that said label would indicate that said article was a true peppermint extract, whereas, in truth and in fact, said article was not a true extract of peppermint, but was a dilute alcoholic solution containing traces of peppermint oil, reinforced with capsicum and artificially colored.

On April 13, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $15.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3349. Misbranding of buchu gin. U. S. v. Victor Gautier & Co. Plea of guilty. Fine, $15.** (F. & D. No. 5100. I. S. No. 21247-d.)

At the March, 1914, term of the District Court of the United States for the Southern District of New York, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in said court an information against Victor Gautier & Co., a corporation, New York, N. Y., alleging the sale by said defendant on April 20, 1912, under a guaranty to the effect that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act of June 30, 1906, of a quantity of buchu gin which was misbranded, and which said article on April 20, 1912, was shipped by the purchaser thereof from the State of New York into the State of Maryland in violation of the Food and Drugs Act. The product was labeled: "Quality Guaranteed. Franklin Brand Buchu [&] Gin Compound. Victor Gautier & Co., Inc., New York. Caution. These goods are carefully prepared under the most modern and improved methods. Made from distilled gin and buchu leaves and is highly recommended."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that it contained alcohol, no declaration of which appeared upon the label. There was no evidence of the presence of buchu in the product.

It was alleged in the information that at the time of said purchase, and at the time of the shipment in interstate commerce, the article was misbranded in that the statement on the label, "Buchu [&] Gin," regarding said article and ingredients and substances contained therein, was false and misleading, in that said words would indicate that buchu was present in said article, whereas, in truth and in fact, buchu was not present in said article.

On April 13, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $15.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3350. Adulteration and misbranding of oil of pennyroyal. U. S. v. Arthur A. Stillwell & Co. Plea of guilty. Fine, $15.** (F. & D. No. 5141. I. S. No. 13354-d.)

At the March, 1914, term of the District Court of the United States within and for the Southern District of New York the United States attorney for the said district, acting upon a report by the Secretary of Agriculture, filed in said court an information against Arthur A. Stillwell & Co., a corporation, New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act, on April 3, 1912, from the State of New York into the State of Massachusetts, of a quantity of oil of pennyroyal which was adulterated and misbranded. The product was labeled: "Oil of Pennyroyal."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Specific gravity, 25°/25° C | 0.9064 |
| Optical rotation (degrees, 100 mm. tube) | +16.8 |
| Insoluble in 2 or 20 volumes of 70 per cent alcohol. | |
| Pulegone (per cent) | 56.5 |

Analysis shows the presence of petroleum in the oil.

Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, to wit, oil of pennyroyal, and differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia, official at the time of said shipment and investigation, in these particulars: The specific gravity of said article was lower than the specific gravity specified for oil of pennyroyal in said Pharmacopœia; said article was insoluble in 2 or more parts of 70 per cent alcohol, whereas said Pharmacopœia provides that said drug should be soluble in 2 or more volumes of 70 per cent alcohol. Misbranding was alleged for the reason that the aforesaid label regarding said drug and the ingredients and substances contained therein was false and misleading, in that said label would indicate that the said drug was pure oil of pennyroyal, whereas, in truth and in fact, said drug was not pure oil of pennyroyal, but contained in addition to oil of pennyroyal other inferior substance [substances], to wit, petroleum and turpentine.

On April 6, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $15.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3351. Adulteration and misbranding of Jamaica ginger and peppermint extract. U. S. v. Victor Gautier & Co. Plea of guilty. Fine, $15.** (F. & D. No. 5146. I. S. Nos. 36223-c, 36224-c.)

At the March, 1914, term of the District Court of the United States for the Southern District of New York the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in said court an information against Victor Gautier & Co., a corporation, New York, N. Y., alleging the sale by the defendant on April 8, 1912, under a guaranty to the effect that the articles were not adulterated or misbranded within the meaning of the Food and Drugs Act of June 30, 1906:

(1) Of a quantity of Jamaica ginger, which was so adulterated and misbranded, and which said article, on April 9, 1912, was shipped by the purchaser thereof from the State of New York into the State of Virginia in violation of the Food and Drugs Act. This product was labeled, "Superfine Jamaica Ginger." Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent)---------- 31.68
Test for ginger: Positive.
Test for capsicum: Positive.

It was alleged in the information that this article, at the time of purchase of the same from said defendant and at the time of the shipment of the same in interstate commerce, was adulterated in that another substance, to wit, a dilute solution of alcohol containing but a small amount of ginger and strengthened with capsicum had been mixed and packed with said article so as to reduce and lower and injuriously affect its quality and strength, and in that another substance, to wit, a dilute solution of alcohol containing but a small amount of ginger and strengthened with capsicum, had been substituted for the genuine article, Jamaica ginger, which said article purported to be. Misbranding was alleged for the reason that the words on the label thereof, "Jamaica Ginger," regarding said article and the ingredients and substances contained therein, were false and misleading in that said label would indicate that said article was Jamaica ginger, whereas, in truth and in fact, the said article was not Jamaica ginger, but was a dilute solution of alcohol containing but a small amount of ginger and strengthened with capsicum.

(2) Of a quantity of peppermint extract, which was adulterated and misbranded, and which, on April 9, 1912, was shipped by the purchaser thereof from the State of New York into the State of Virginia in violation of the Food and Drugs Act. This product was labeled "Superfine Peppermint." Analysis of a sample of this product by the said Bureau of Chemistry showed the following results:

Alcohol (per cent)---------- 31.16
Oil of peppermint: Trace.
Color: Artificial—Naphthol Yellow S.

It was alleged in the information that the article, at the time of purchase of the same and at the time of the shipment of the same in interstate commerce, was adulterated in that another substance, to wit, a dilute solution of alcohol, artificially colored with a coal tar dye, and containing only a trace of peppermint oil, had been mixed and packed with said article so as to reduce and lower and injuriously affect its quality and strength; and, further, in that a dilute solution of alcohol, artificially colored, containing only a trace of peppermint oil, had been substituted wholly for the genuine article; and said article was further adulterated in that it was artificially colored with a coal tar dye, to wit, Naphthol Yellow S, in a manner whereby its inferiority

was concealed. Misbranding was alleged for the reason that the words "Superfine Peppermint" on the label thereof, regarding said article and the ingredients and substances contained therein, were false and misleading, in that said label would indicate that said article was a genuine extract of peppermint, whereas said article was not a genuine extract of peppermint, but, in truth and in fact, was a dilute solution of alcohol, artificially colored, containing only a trace of peppermint oil.

On April 13, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $15.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3352. Adulteration of tomato pulp. U. S. v. 552 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5193. I. S. Nos. 8952–e, 8953–e. S. No. 1795.)

On May 1, 1913, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 552 cases, each containing 48 cans of tomato pulp, remaining unsold in the original unbroken packages at Chicago, Ill., alleging that the product had been shipped on December 20, 1912, and transported from the State of Maryland into the State of Illinois, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the libel for the reason that it consisted wholly of a filthy, decomposed and [or] putrid vegetable substance. Adulteration was alleged for the further reason that the product consisted in part of a filthy, decomposed and [or] putrid vegetable substance.

On March 30, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the products should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 25, 1914.*

**3353. Adulteration and misbranding of olive oil. U. S. v. Antonius Lekakis and Gus Sigelakis (Lekakis & Sigelakis). Plea of guilty. Fine, $25.** (F. & D. No. 5217. I. S. No. 20246–d.)

On February 13, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Antonius Lekakis and Gus Sigelakis, copartners, trading under the firm name and style of Lekakis & Sigelakis, New York, N. Y., alleging shipment by said defendants in violation of the Food and Drugs Act, on March 19, 1912, from the State of New York into the State of Michigan, of a quantity of so-called olive oil which was adulterated and misbranded. The product was labeled: (In modern Greek) "Elaion Gnesion Hellenikon Ideodes." (Translation) "Pure (genuine) Olive Oil Greek Ideal." (In English) "Hellenic Ideal Brand Trade Mark Pure Olive Oil."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that about 40 to 45 per cent of cottonseed oil was present therein.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, cottonseed oil, had been mixed and packed with it so as to reduce and lower and injuriously affect its quality and strength, and

for the further reason that a mixture of olive oil and cottonseed oil had been substituted wholly or in part for the pure olive oil which the said article purported to be. Misbranding was alleged for the reason that the statement "Pure Olive Oil," appearing on the label, was false and misleading, in that it conveyed the impression that the product aforesaid consisted entirely of olive oil, whereas, in truth and in fact, the said product did not consist of pure olive oil, but was a mixture of olive oil and cottonseed oil. Misbranding was alleged for the further reason that the product was labeled so as to deceive and mislead the purchaser, being labeled "Pure Olive Oil," thereby creating the impression that the product was pure olive oil, whereas, in truth and in fact, said product was not pure olive oil, but a mixture of olive oil and cottonseed oil.

On March 13, 1914, a plea of guilty was entered on behalf of the defendant firm and the court imposed a fine of $25.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3354. Adulteration of tomato pulp and tomato purée. U. S. v. 800 Cases, More or Less, of Tomato Pulp. Default decree of condemnation and forfeiture. Product ordered destroyed.** (F. & D. No. 5316. I. S. Nos. 1709–h, 1710–h. S. No. 1907.)

On August 18, 1913, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district a libel for the seizure and condemnation of 800 cases, each containing 48 cans of tomato pulp, or of tomato purée, remaining unsold in the original unbroken packages at Cincinnati, Ohio, alleging that the product had been transported from the State of Indiana into the State of Ohio, and charging adulteration in violation of the Food and Drugs Act. Six hundred cases of the product were labeled: "Recess Brand Tomato Puree—E. V. M. Co. Packed for The Esterman-Verkamp-Murphy Co., Cincinnati, Ohio." Two hundred cases of the product were labeled: "Ruby Brand Tomato Pulp for Soup—Made from Tomatoes, Pieces of Tomatoes and Tomato Trimmings. Contents 9 oz. or more. Ruby Brand Tomato Pulp—Packed by Whiteland Canning Co. Whiteland, Ind. Grafton Johnson, Propr."

Adulteration of the product was alleged in the libel for the reason that said article of food contained and consisted of a filthy and decomposed vegetable substance.

On August 30, 1913, the appearance of Grafton Johnson, claimant, Whiteland, Ind., proprietor of the Whiteland Canning Co., was entered. On December 26, 1913, the said claimant having failed to file any answer whatsoever to the charges set forth in the libel, notwithstanding repeated requests so to do made upon him by the United States attorney, it was ordered that the libel be taken pro confesso and that the case might be presented for final judgment and decree any time subsequent to 30 days from the entry thereof. On February 19, 1914, the cause having come on for final hearing, upon motion of the United States attorney for judgment and upon the testimony of various witnesses offered ex parte on behalf of the libelant to sustain the allegations in the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal and that said claimant, Grafton Johnson, pay the costs of the proceedings, taxed at $138.53.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3355. Adulteration and misbranding of olive oil. U. S. v. 48 Cans of Misbranded Olive Oil. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5354. I. S. No. 1535–h. S. No. 1961.)

On October 17, 1913, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district a libel for the seizure and condemnation of 1 case containing 48 1- and 2-quart cans of oil, remaining unsold in the original unbroken packages at New Haven, Conn., alleging that the product had been shipped on or about August 23, 1913, and transported from the State of New York into the State of Connecticut, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cans were labeled: "Olive Oil—Specialty from Lucca Le Tre Regina Dell 'olio Puro D'olivia (picture of 3 queens, Italia, Francia & Spagno) Distasio Motta & Marra, New York."

Adulteration of the product was alleged in the libel for the reason that the product was not olive oil, but instead consisted in large part of cottonseed oil which had been mixed and packed with and substituted for olive oil in such manner as to reduce or lower the quality of the product. Misbranding was alleged for the reason that the retail packages were labeled "Olive Oil—Specially [Specialty] from Lucca," when, in truth and in fact, said retail packages did not contain olive oil but contained a product consisting largely of cottonseed oil which had been mixed and packed with and substituted for olive oil.

On December 22, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3356. Adulteration and misbranding of olive oil. U. S. v. 36 Cans of Misbranded Olive Oil. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5355. I. S. Nos. 1536–h, 1537–h. S. No. 1961.)

On October 17, 1913, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 case containing 36 ½-gallon and ¼-gallon cans of oil, remaining unsold in the original unbroken packages at New Haven, Conn., alleging that the product had been shipped on or about September 18, 1913, and transported from the State of New York into the State of Connecticut, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cans were labeled: "Olive Oil—Specialty—From Lucca (pictorial representations of coat of arms, queens, etc.) Lucca Olive Oil—L. Natalini. Net contents 3½ lbs. 6¾ oz."

Adulteration of the product was alleged in the libel for the reason that said product was not olive oil, but that instead it consisted in large part of cottonseed oil which had been mixed and packed with and substituted for olive oil in such manner as to reduce or lower the quality of the product. Misbranding was alleged for the reason that said retail packages were labeled: "Olive Oil Specially [Specialty] from Lucca," when in truth and in fact said retail packages did not contain olive oil, but contained a product consisting largely of cottonseed oil which had been mixed and packed with and substituted for olive oil.

On December 22, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3357. Adulteration and misbranding of olive oil. U. S. v. 36 Cans of Misbranded Olive Oil. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5356. I. S. Nos. 1538-h, 1539-h. S. No. 1961.)

On October 17, 1913, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 case containing 36 ½-gallon and ¼-gallon cans of oil, remaining unsold in the original unbroken packages at New Haven, Conn., alleging that the product had been shipped on or about September 18, 1913, and transported from the State of New York into the State of Connecticut, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Olive Oil—Specialty—From Lucca (pictorial representations of coat of arms, queens, etc.) Lucca Olive Oil—L. Natalini. Net contents 3½ lbs. 6¾ oz."

Adulteration of the product was alleged in the libel for the reason that it was not olive oil, but that instead it consisted in large part of cottonseed oil which had been mixed and packed with and substituted for olive oil in such manner as to reduce or lower the quality of the product. Misbranding was alleged for the reason that said retail packages were labeled: "Olive Oil Specially [Specialty] from Lucca," when in truth and in fact said retail packages did not contain olive oil, but contained a product consisting largely of cottonseed oil which had been mixed and packed with and substituted for olive oil.

On December 22, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3358. Adulteration and misbranding of olive oil. U. S. v. 96 Cans of Misbranded Olive Oil. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5357. I. S. No. 1541-h. S. No. 1961.)

On October 17, 1913, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 case containing 48 pint cans of oil and another case containing 48 other cans of oil, remaining unsold in the original unbroken packages at New Haven, Conn., alleging that the product had been shipped on or about June 30, 1913, and transported from the State of New York into the State of Connecticut, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cans in one of the cases were labeled: "Olive Oil—Specialty—From Lucca (pictorial representations of coat of arms, queens, etc.) Lucca Olive Oil—L. Natalini Brand;" the cans in the other case were labeled: "(Pictorial representations of medals of award) Net contents 1½ lbs. 6¾ oz. Baron del Bosco (Crown and shield bearing picture of bear and lion)—Italy—Extra Fine—Olive Oil—Guaranteed absolutely pure—M. Beneventano, Del Bosco, Sole Agent, 212 Lafayette St., New York."

Adulteration of the product was alleged in the libel for the reason that the product was not olive oil, but that instead it consisted in large part of cottonseed oil which had been mixed and packed with and substituted for olive oil in such manner as to reduce or lower the quality of the product. Mis-

branding was alleged for the reason that the retail packages in one of the cases were labeled: "Olive Oil Specially [Specialty] from Lucca," and the retail packages in the other case were labeled: "Extra Fine—Olive Oil—Guaranteed Absolutely Pure," when in truth and in fact said retail packages did not contain olive oil, but contained a product consisting largely of cottonseed oil which had been mixed and packed with and substituted for olive oil.

On December 22, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3359. Adulteration and misbranding of oil of sweet birch. U. S. v. 2 Cans of Oil of Sweet Birch. Tried to the court and a jury. Verdict for libelant. Decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5369. I. S. No. 2336-h. S. No. 1968.)

On October 24, 1913, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 cans of oil of sweet birch, more or less, remaining unsold in the original unbroken packages at Baltimore, Md., alleging that the product had been transported from the State of Tennessee into the State of Maryland, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Muth Bros. & Co., Baltimore, Md. From M. G. Teaster."

Adulteration of the product was alleged in the libel for the reason that methyl salicylate had been mixed and packed with and substituted for oil of sweet birch in such manner as to reduce or lower or injuriously affect its quality and strength, and for the further reason that said oil of sweet birch had been colored in a manner to conceal inferiority. Misbranding was alleged for the reason that the product was sold as oil of sweet birch, when in fact it consisted of a mixture containing methyl salicylate.

On March 2, 1914, the case having come on for trial before the court and a jury, a verdict for the libelant was returned by the jury, and on April 3, 1914, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3360. Adulteration and misbranding of vinegar. U. S. v. 15 Cases, More or Less, of So-called Pure Cider Vinegar, and 37 Cases, More or Less, of So-called Pure Sugar Vinegar. Default decrees of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 5397. I. S. Nos. 81-h, 82-h. S. No. 1989.)

On November 1, 1913, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 15 cases, more or less, each containing 1 dozen bottles of so-called pure cider vinegar, and 37 cases, more or less, each containing 2 dozen bottles of so-called pure sugar vinegar, remaining unsold in the original unbroken packages at Kansas City, Kans., alleging that the product had been shipped on or about September 17, 1913, and transported from the State of Missouri into the State of Kansas, and charging adulteration and misbranding in violation of the Food and Drugs Act. The 15 cases and the bottles therein contained were labeled: "Paragon Brand Pure Cider Vinegar—Put up by Kansas City Preserving Co., Kansas City, Mo." The 37 cases and the bottles therein contained were labeled: "Paragon Brand Pure Sugar Vinegar—Put up by Levi-

son Preserving Co., Kansas City, Mo.—Guaranteed by the Levison Preserving Co. under the Food and Drugs Act, June 30, 06."

Adulteration of the products was alleged in the libels for the reason that they were not cider vinegar and sugar vinegar, respectively, but were adulterated in that said products consisted in whole or in part of distilled vinegar or dilute acetic acid which had been mixed and packed with and substituted for the pure products in such a manner as to reduce or lower or injuriously affect their quality and strength. Misbranding was alleged for the reason that to each case and each bottle was attached a brand or label in the words and figures set forth above, respectively, and that said labels were misleading and false and calculated to induce the purchaser to believe that said so-called cider vinegar and said so-called sugar vinegar were pure, when, in truth and in fact, the same were adulterated as hereinbefore set forth, and that by reason of said false and misleading brands or labels said cases and bottles contained therein and the products therein were subject to seizure and confiscation.

On January 12, 1914, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered and it was ordered by the court that the products should be sold by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3361. Adulteration and misbranding of oil of birch. U. S. v. 2 Packages of Oil of Birch. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5405. I. S. No. 140–h. S. No. 1994.)

On November 6, 1913, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 packages, containing approximately 118 pounds, of a product purporting to be oil of birch, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about October 1, 1913, and transported from the State of Tennessee into the State of New York, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product bore no label except the name and address of the consignee and express data, but was invoiced by the shipper as birch oil.

Adulteration of the product was alleged in the libel for the reason that it was offered for sale as oil of birch, when, in fact, said product consisted largely of methyl salicylate, which was substituted for the pure oil. Misbranding was alleged for the reason that said product was offered for sale and invoiced by the shipper thereof as birch oil, whereas, in truth and in fact, the said product consisted largely of methyl salicylate, which was substituted for the pure oil.

On January 6, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3362. Adulteration of tomato catsup and purée. U. S. v. 16 Barrels, 6 Half Barrels, 12 Quarter Barrels, 2 Kegs, and 28 Cases of Adulterated Catsup, and 15 Cases of Purée. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5438. I. S. Nos. 3025–h, 3026–h. S. No. 2018.)

On November 19, 1913, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and on November 20, 1913, an

amended libel, for the seizure and condemnation of 16 barrels, 6 half barrels, 12 quarter barrels, 2 kegs, and 28 cases, each of said cases containing 12 1-gallon cans of adulterated catsup, and 15 cases, each contining 12 1-gallon cans of adulterated purée, remaining unsold in the original unbroken packages at Portland, Oreg., alleging that the product had been shipped on or about November 14, 1913, and transported from the State of California into the State of Oregon, and charging adulteration in violation of the Food and Drugs Act. The catsup was labeled: "Tomato Catsup—Contains 3/10 of 1% Benzoate of Soda." The purée was not labeled.

Adulteration of the product was alleged in the amended libel for the reason that said catsup and said purée consisted in whole or in part of filthy, decomposed, and [or] putrid vegetable substance.

On February 26, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be dealt with or destroyed in conformity with the instructions of the Secretary of Agriculture and usual in such cases.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3363. Adulteration and misbranding of concentrated milk. U. S. v. M. & O. Milk Co. Plea of guilty. Fine, $10 and costs.** (F. & D. No. 5445. I. S. Nos. 186–e, 187–e, 188–e, 189–e, 190–e.)

On February 17, 1914, the United States attorney for the Eastern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the M. & O. Milk Co., a corporation, Waterloo, Ill., alleging shipment by said company in violation of the Food and Drugs Act, on or about October 30, 1912, from the State of Illinois into the State of Missouri, of a quantity of so-called concentrated milk which was adulterated and misbranded. The product was labeled: (On tops and necks of cans) "M. & O. Milk Co., Waterloo, Ill." (On tags attached to cans) "Full Cream Concentrated Milk. From M. & O. Milk Co. Waterloo, Illinois. For M. & O. Milk Co. 2338 Olive St. St. Louis, Mo. No. Cans. No. Gals. Date Oct. 29, 1912."

Microscopical examination of samples of the product by the Bureau of Chemistry of this department showed the five samples examined to be identical in appearance. In each case the fat globules were very small, usually running about 0.001 mm. in diameter, a few ranging up to 0.005 mm. in diameter. These results indicated that the product had been passed through a homogenizer.

Adulteration of the product was alleged in the information for the reason that other substances, namely, dried skimmed milk, water, and butter oil, had been substituted in part for full-cream concentrated milk. Misbranding was alleged for the reason that the statement "Full Cream Concentrated Milk," borne on said labels attached to the cans in which said article was shipped and delivered for shipment, was false and misleading, because, as a matter of fact, the contents of the cans were not full-cream concentrated milk, as represented by said statement, but said cans in fact contained a mixture composed in part of dried skimmed milk, water, and butter oil; and, further, in that said article was labeled and branded so as to mislead and deceive the purchaser thereof into the belief that it was full-cream concentrated milk, whereas, in truth and in fact, said article was not full-cream concentrated milk, but was a mixture in part of dried skimmed milk, water, and butter oil.

On April 8, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $10 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3364. Adulteration and misbranding of sirup of tamarinds. U. S. v. 5 Cases, More or Less, of Sirup of Tamarinds. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5451. I. S. No. 4895-h. S. No. 2024.)

On November 29, 1913, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 5 cases, each containing 12 bottles of sirup of tamarinds, remaining unsold in the original unbroken packages at Steubenville, Ohio, alleging that the product had been transported from the State of New York into the State of Ohio, and charging adulteration and misbranding in violation of the Food and Drugs Act. The shipping cases were labeled: "Guaranteed by W. P. Bernagozzi under Food and Drugs Act June 30, 1906—Serial No. 4438—New York—12 Bottles Tamarindo Bernag Brand—12 Bottles 5's—Fragile—P. Monti—Steubenville, Ohio." The bottles were labeled: "Syrup of Tamarinds—A compound—Guaranteed under Food and Drugs Act June 30, 1906—Serial No. 4438—Trade Mark;" "A Compound—Artificially colored Made in New York—Guaranteed by W. P. Bernagozzi under the Pure Food and Drugs Act, June 30th, 1906,—Serial No. 4438—Liquid Contents twenty-six ounces."

It was alleged in the libel that the article of food was adulterated in the following particulars, to wit: First, that a certain substance, consisting of a sugar solution acidified with tartaric acid and artificially colored with burnt sugar or caramel, had been mixed and packed with said article of food so as to reduce and lower and injuriously affect its quality and strength. Second, that a certain substance, to wit, a sugar solution acidified with tartaric acid and artificially colored with burnt sugar or caramel, had been substituted for said article of food so purporting by its label to be sirup of tamarinds. Third, that said article of food was colored with burnt sugar or caramel in a manner whereby its inferiority was concealed. It was further alleged in the libel that the article of food was misbranded in the following particulars: First, that the label of said article of food bore a statement regarding the article and the ingredients and substances contained therein, which said statement, to wit, "Syrup of Tamarinds," was false, misleading, and deceptive in that it represented said article of food to be sirup of tamarinds, when, in truth and in fact, said article of food was not sirup of tamarinds, but an imitation thereof. Second, that said article of food was not sirup of tamarinds; that it was an imitation of sirup of tamarinds; and that it was offered for sale under the distinctive name of an article of food known and designated as sirup of tamarinds, when, in truth and in fact, it was another and different article. Third, that said article of food was labeled and branded as aforesaid so as to deceive and mislead the purchaser thereof in that by its said label it was purported and represented to be sirup of tamarinds, whereas, in truth and in fact, it was not sirup of tamarinds, and was wholly an imitation thereof.

On March 17, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3365. Adulteration of tomato pulp. U. S. v. 200 Cases, More or Less, of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5452. I. S. No. 6064-h. S. No. 2026.)

On December 1, 1913, the United States attorney for the Southern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases, more or less, of tomato pulp, remaining unsold in the

original unbroken packages at Galveston, Tex., alleging that the product had been shipped on November 11, 1913, and transported from the State of Maryland into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "4 Doz. No. 1—Miller Bros. and Co.—Jumbo Brand—Tomato Pulp—Baltimore, Md." The retail packages were labeled: "Jumbo Brand Tomato Pulp—Used for making soups, sauces, gravies, and for seasoning purposes—Tomato Pulp—Packed by Miller Bros. and Co., Baltimore, Md., U. S. A.—Jumbo Brand—Trade mark registered."

It was alleged in the libel that said article was adulterated by being decomposed and [or] putrid, and that so being decomposed and [or] putrid made the same deleterious and might render the same injurious to health, and that the decomposition and consequent adulteration of the tomato pulp aforesaid was in violation of the sixth paragraph of section 7, under "Food," of the Pure Food and Drugs Act of June 30, 1906.

On January 13, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal, and that the United States recover its costs from Miller Bros. & Co., consignors, Baltimore, Md.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3366. Misbranding of blackberry cordial. U. S. v. The Ullman Co. Plea of nolo contendere. Fine, $25 and costs.** (F. & D. No. 5471. I. S. No. 6016–e.)

On March 24, 1914, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Ullman Co., a corporation, Cincinnati, Ohio, alleging shipment by said company in violation of the Food and Drugs Act, on or about October 17, 1912, from the State of Ohio into the State of Florida, of a quantity of blackberry cordial which was misbranded. The product was labeled: "Blackberry Cordial 32 oz. Alcoholic Strength 12–1/2%—Guaranteed by The Ullman Co., under the National and Florida Pure Food Laws. The Ullman Co., Cincinnati, O."

Examination of samples of the product by the Bureau of Chemistry of this department showed the following results:

| | Net volume. | Shortage. |
|---|---|---|
| | *Ounces.* | *Per cent.* |
| 1 | 28.06 | 12.30 |
| 2 | 29.43 | 8.07 |
| 3 | 30.77 | 3.84 |
| Average | 29.42 | 8.06 |

Misbranding of the product was alleged in the information for the reason that the statement, "32 oz.," borne on the label of the bottles containing the article, was false and misleading because it conveyed the impression that the bottles contained 32 liquid ounces of said article, whereas in truth and in fact said bottles did not contain 32 liquid ounces of said article, but contained a less amount. Misbranding was alleged for the further reason that the article was labeled and branded so as to deceive and mislead the purchaser, being labeled and branded on the bottles containing said article, "32 oz.," thereby purporting

that said bottles contained 32 liquid ounces of said article, whereas in truth and in fact said bottles did not contain 32 liquid ounces of said article, but contained a less amount.

On April 2, 1914, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $25 and costs of $14.35.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3367. Adulteration of tomato catsup. U. S. v. 25 Cases of Adulterated Tomato Catsup. Consent decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5472. I. S. No. 3036-h. S. No. 2044.)

On December 11, 1913, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 cases, each containing 24 bottles of adulterated tomato catsup, remaining unsold in the original unbroken packages at Portland, Oreg., alleging that the product had been shipped on or about November 5, 1913, by the Fisher Packing Co., of San Francisco, Cal., and transported from the State of California into the State of Oregon and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Glass This Side Up with Care H & G Co. Portland Golden Gate Brand Tomato Catsup Prepared from Ripe Tomatoes Net Contents—15 ozs. Contains 1/10 of 1% Benzoate of Soda Manufactured by Fisher Packing Company, San Francisco, California."

Adulteration of the product was alleged in the libel for the reason that said catsup consisted in whole or in part of filthy, decomposed, and [or] putrid vegetable substance.

On January 15, 1914, the said Fisher Packing Co., claimant, filed its answer denying the material allegations of the libel, but afterwards entered into a stipulation with the libelant for a decree of forfeiture and condemnation, and on March 24, 1914, the cause having come on for final action, upon motion of the United States attorney, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3368. Adulteration and misbranding of condensed milk. U. S. v. 14 Barrels, More or Less, of Condensed Milk. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5477. I. S. No. 4125-h. S. No. 2045.)

On December 13, 1913, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 14 barrels, more or less, of a certain article of food designated as sweetened condensed milk, remaining unsold in the original unbroken packages at Cincinnati, Ohio, alleging that the product had been transported from the State of Illinois into the State of Ohio, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Conf. Sweetened Condensed Milk."

Adulteration of the product was alleged in the libel for the reason that a valuable constituent of said article, to wit, milk fat, had been wholly or in part abstracted therefrom. Misbranding of the article was alleged for the reason that the aforesaid labels upon the barrels containing the article bore certain statements, designs, and devices regarding said article and the ingredients and

substances contained therein, which said statements, designs, and devices, to wit, "Conf. Sweetened Condensed Milk," were false, misleading, and deceptive, in that they represented, imported, and indicated said article to be a sweetened condensed milk, whereas, in truth and in fact, said article of food did not contain a sufficient amount of milk fat to constitute sweetened condensed milk, namely, said article contained only 5.85 per cent milk fat, when it should have contained [at least] 7.7 per cent milk fat; that by reason of the facts aforesaid said article was further misbranded in that it was labeled and branded as aforesaid so as to deceive and mislead the purchaser thereof.

On March 24, 1914, the cause having come on to be heard upon the libel and upon the answer filed by Libby, McNeill & Libby (Inc.), claimant, Chicago, Ill., admitting the facts set forth above, and consenting to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released and restored to said claimant upon payment of all costs of the proceedings and the execution of a good and sufficient bond in the penal sum of $300, in conformity with section 10 of the act.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3369. Adulteration and misbranding of wheat bran. U. S. v. 600 Sacks, More or Less, of Wheat Bran. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5478. I. S. No. 1763-h. S. No. 2043.)

On December 11, 1913, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 600 sacks, each containing 100 pounds of wheat bran, remaining unsold in the original unbroken packages at Kennedy Station, Ohio, alleging that the product had been transported from the State of Wisconsin into the State of Ohio, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "100 lbs. Wheat Bran—Manufactured by H. E. McEachron Co., Wausau, Wis. Guarantee: 14 per ct. Protein, 4.3 per ct. Fat, 11 per ct. Fiber."

It was alleged in the libel that the product was adulterated and liable to seizure and condemnation as provided in the Food and Drugs Act for the reason that said wheat bran was guaranteed to contain 14 per cent protein, 4.3 per cent fat, and 11 per cent fiber, but said wheat bran, however, contained 8.1 per cent ground screenings and 1.5 per cent chaff, which foreign and adulterated substances constituted an adulteration of said wheat bran. It was further alleged in the libel that the aforesaid label constituted a misbranding of said article of food, in this, to wit, that said label did not show the fact that said article of food contained 8.1 per cent ground screenings and 1.5 per cent chaff, which latter articles, or most of same, had been added to said product, and said addition of foreign matter constituted a misbranding of said product. [In the report of this case to the Department of Justice this department recommended seizure on the ground that the product was adulterated in that certain substances, to wit, ground screenings and chaff, had been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; and, further, in that certain substances, to wit, ground screenings and chaff, had been substituted wholly or in part for the article; and that the product was misbranded in that it was labeled as set forth above so as to deceive or mislead the purchaser into the belief that it was bran, whereas, in truth and in fact, it was a mixture of bran, ground screenings, and chaff; and, further, in that the label as set forth above bore a certain statement regarding the ingredients or substances con-

tained in the article, to wit, "wheat bran," which statement was false and misleading in that it would mislead and deceive the purchaser into the belief that the product was bran, whereas, in truth and in fact, it was a mixture of bran, ground screenings, and chaff.]

On February 10, 1914, O. L. Hunter, Chicago, Ill., doing business as O. L. Hunter & Co., claimant, having filed his answer consenting to a decree, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be released and restored to said claimant upon payments of all the costs of the proceedings, except storage and insurance, and execution of bond in the sum of $1,000, in conformity with section 10 of the act.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3370. Adulteration and misbranding of cider. U. S. v. The Elk Bottling Co. Plea of guilty. Fine, $20 and costs.** (F. & D. No. 5480. I. S. No. 36274-e.)

On March 14, 1914, the United States attorney for the eastern district of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district an information against the Elk Bottling Co., a corporation, St. Louis, Mo., alleging shipment by said company in violation of the Food and Drugs Act, on or about July 15, 1912, from the State of Missouri into the State of Illinois, of a quantity of cider which was adulterated and misbranded. The product was labeled: "Sweet Cider Produced of Concentrated Pure Apple Juice, preserved with 1–1000 part of Benzoate of soda. The Elk Bottling Co. 1440 Blair Ave. St. Louis, Mo."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Solids (grams per 100 cc) | 1.16 |
| Nonsugar solids (grams per 100 cc) | 0.56 |
| Reducing sugar after inversion (grams per 100 cc) | 0.61 |
| Color (degrees, brewer's scale, ½ inch) | 30 |
| Ash (grams per 100 cc) | 0.56 |
| Alkalinity soluble ash (cc N/10 acid per 100 cc) | 1.6 |
| Saccharin (grams per 100 cc) | 0.011 |

The product is not a sweet cider, but is a very dilute apple-juice product, to which has been added artificial color and saccharin.

Adulteration of the product was alleged in the information for the reason that water, artificially sweetened with saccharin and artificially colored with caramel, had been mixed and packed with the article, so as to reduce, lower, or injuriously affect its quality or strength; and, further, in that other substances, namely, water, saccharin, and caramel, had been substituted wholly or in part for sweet cider; and, further, in that said article had been colored with caramel in a manner whereby its inferiority was concealed; and, further, in that said article contained saccharin, an added poisonous or deleterious ingredient, which might render said article injurious to health. Misbranding was alleged for the reason that the statements "Sweet Cider" and "Produced of Concentrated Pure Apple Juice," borne on the labels of the bottles in which said article was shipped and delivered for shipment, were false and misleading, because said statements misled and deceived the purchaser into the belief that said article was genuine apple cider, whereas it was not genuine apple cider, but was a mixture or compound, composed of a dilute solution of apple product and water, artificially sweetened with saccharin and artificially colored with car-

amel, and, further, in that said article was an imitation sweet cider prepared with a dilute solution of water and apple product, artificially sweetened with saccharin and artificially colored with caramel, and was offered for sale and sold under the distinctive name of sweet cider; and, further, for the reason that said article was labeled and branded so as to deceive and mislead the purchaser thereof into the belief that it was genuine sweet cider when not so.

On April 1, 1914, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $20, with costs of $18.83.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3371. Alleged adulteration of tomato catsup. U. S. v. 15 Cases of Tomato Catsup. Tried to the court. Finding in favor of claimant.** (F. & D. No. 5487. I. S. No. 3035-h. S. No. 2057.)

On or about December 17, 1913, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 15 cases, each containing six 1-gallon bottles of tomato catsup, alleged to have been adulterated, remaining unsold in the original unbroken packages at Portland, Oreg., alleging that the product had been shipped on or about November 10, 1913, by the Pacific Vinegar & Pickle Works, San Francisco, Cal., and transported from the State of California into the State of Oregon, and charging adulteration in violation of the Food and Drugs Act. The shipping cases were branded: "½ Doz. Gallon Bottles California Home Brand Tomato Catsup Packed and guaranteed by Pacific Vinegar & Pickle Works, San Francisco, U. S. A. Main Plant Hayward Alameda Co., Cal., U. S. Serial No. 11418." (Top of Case) "Glass with Care This side up. Martin Marks Coffee Co., Portland, Oreg., Arrow Line S. S. Co." Two of the retail packages were labeled: "Contains One gallon The California Home Brand Pure Tomato Catsup (Contains 1/10 of 1% Benzoate of Soda) Packed and Guaranteed by Pacific Vinegar & Pickle Works, San Francisco, U. S. A. Main plant, Hayward, Alameda Co., Cal., U. S. Serial No. 11418."

Adulterations of the product was alleged in the libel for the reason that said catsup consisted in whole or in part of filthy, decomposed and [or] putrid vegetable substance.

On February 26, 1914, the cause having come on for trial without intervention of a jury, the jury having been waived by written consent of the parties, and the said Pacific Vinegar & Pickle Works, claimant, having appeared by its attorneys and having introduced oral evidence upon the trial of the cause, the libelant having introduced no evidence, and the cause having been fully argued and submitted to the court, the following findings of fact and conclusions of law were made by the court (Bean, *J.*):

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

That the tomato catsup contained in the 15 cases of tomato catsup seized under and in accordance with the prayer of libel No. 6231, filed in the above entitled action, does not consist either in whole or in part of filthy, decomposed, or putrid vegetable substance and claimant is entitled to a judgment in its favor.

On the same date, it was adjudged and decreed that judgment be entered in favor of claimant and that the action be dismissed.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3372. Adulteration of tomato catsup. U. S. v. 200 Cases of Adulterated Tomato Catsup. Tried to the court. Finding in favor of the Government. Decree of condemnation, forfeiture, and destruction. (F. & D. No. 5494. S. No. 2058.)**

On or about December 19, 1913, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases of adulterated tomato catsup, remaining unsold in the original unbroken packages at Portland, Oreg., alleging that the product had been shipped on or about November 1, 1913, and transported from the State of California into the State of Oregon, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "ST 1 doz. #10 tins Luxury Brand California Tomato Catsup Packed by Sunlit Fruit Co., Berkeley, Cal. Preserved with 1/10 of 1% benzoate soda—from trimmings— Hudson & Gram Co., Portland." The cans in the cases were labeled: "Luxury Brand Tomato Catsup Not Artificially Colored. Made from Tomato Trimmings, Pure Spices, Granulated Sugar, Onions and Vinegar, Contains one tenth of one per cent Benzoate of Soda Net Weight 7 lbs. Packed by Sunlit Fruit Co., Berkeley, Cal. Guaranteed by the Sunlit Fruit Co. under the Food and Drugs Act, June 30, 1906, Serial No. 8988."

Adulteration of the product was alleged in the libel for the reason that said catsup consisted in whole or in part of filthy, decomposed and [or] putrid vegetable substance.

On February 20, 1914, the case came on to be heard before the court without the intervention of a jury, and after the submission of evidence and argument by counsel was submitted to the court. On March 9, 1914, a finding was made favorable to the contentions of the Government, as will more fully appear from the following opinion by the court (Bean, *D. J.*):

The United States, proceeding under the Pure Food and Drugs Act (34 Stat. L., 770), filed a libel in this court for the condemnation of 200 cases of tomato catsup, alleging that it was adulterated within the meaning of the act, which declares that a food product is deemed to be adulterated "if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance." After the seizure the product was claimed by the company which manufactured it and the proceedings defended. The claimant admits the interstate shipment and other jurisdictional facts, but denies that the catsup was decomposed or adulterated within the meaning of the law.

By stipulation of the parties the case was tried before the court without a jury. It turns upon two questions: First, whether the product was in fact decomposed, and if so, whether it was adulterated as defined by the pure-food law. It was manufactured from pulp screened from peelings, cores, and by-products of tomatoes, obtained in the course of their preparation for canning. The decay or decomposition of tomatoes or tomato products is commonly the result of the attack upon the fruit in the field or in process of manufacture of various forms of plant life, such as yeast, bacteria, and mold. They feed upon certain compounds in the fruit, reducing the food value of the product and producing a by-product of a more or less offensive character, and are evidences of decay and decomposition. The condiments used in the manufacture of tomato catsup have the effect of concealing decomposition or putrefaction from the senses, and its existence can most readily be determined by a bacteriological analysis of the manufactured product to ascertain whether the organisms referred to are present in sufficient quantities to indicate a decomposed state.

Various samples of the product in question have been carefully analyzed under the microscope, separately, by Dr. Schneider, of the University of California and the Government laboratory in San Francisco, and Prof. Beckwith, of the Oregon Agricultural College, both of whom are expert bacteriologists, and they agree that it contains bacteria, yeast, and mold in very large and unusual quantities, as high as from 350 million to 1 billion bacteria and 15 million

yeast spores per cubic centimeter (about one-quarter of a teaspoonful), and mold hyphæ in abundance, thus indicating, in the opinion of these experts, a largely decomposed conditon—Dr. Schneider says from 10 to 15 per cent—and, according to their testimony, it is unfit for human food. This testimony is not contradicted in any way, although the claimant was permitted to and did take samples of the goods for analysis after their seizure. Nor is there any conflict among the experts as to the scientific deductions to be made therefrom. It would seem conclusive, therefore, of the fact that the product is decomposed in part or in whole. The examination of the bacteriologists is confirmed by a chemical analysis made by the chemist at the Government laboratory, and, in my judgment, finds support in the method of manufacture. The evidence shows that the fruit from which the product in question was manufactured was brought to the factory in carload lots in boxes containing about 50 pounds each. Without being sorted or examined in any way, except the merest visual examination of the outer layer of fruit, the contents of the boxes were emptied for washing into a vat containing about 150 gallons of water, which was only changed once a day, except as it might be affected by a 1-inch stream running into the vat and an overflow pipe at the top. While in the water the tomatoes were stirred by a mechanical screw-like agitator, which subsequently carried them to the steaming table, where they were scalded with hot water to loosen the skin, and washed under a spray of cold water. From there they were taken in buckets to the peeling table, where the skins were removed and the tomatoes graded for canning. Then the skins, with such pulp as adhered to them, the stem ends, and like by-products were placed in buckets by the operatives and subsequently taken to another department of the factory, where they were used in the manufacture of the catsup in question.

The washing of a large quantity of fruit which necessarily is more or less infected with bacteria, mold, and decay in the manner described would naturally have a tendency to foul the water and infect the entire lot, and especially the skins and by-products from which the catsup in question was manufactured. Again, the claimant depended on the peelers or sorters to sort out and reject the decayed portions from the trimmings before they were sent to the catsup department. The peelers were paid by the piece for the peeled tomatoes only, and it is but natural that they would become careless or indifferent about the removal of the decayed material from that portion of the output for the handling of which they received no direct compensation. It therefore seems to me that the method of manufacture adopted by the claimant was calculated to produce just such a product as the bacteriologists found the one in question to be. Better methods of handling the fruit are in vogue, for it is in evidence that in other factories, the output of which was shown to be unobjectionable, the tomatoes were sorted and the decayed or infected ones removed before being washed, and were washed in perforated metal cylinders by sprays of clean water.

If the testimony in this case is to be considered, and it is uncontradicted, there is, in my judgment, but one conclusion which can be reached, and that is, the product in question was decomposed and adulterated within the meaning of the Food and Drugs Act.

It is argued for the claimant that since the presence of bacteria, mold, and yeast in any quantity is evidence of decomposition or the process of decomposition, and there is no fixed standard by which it can be determined when a product has reached such a stage of decomposition as to "consist in whole or in part of filthy, decomposed, or putrid vegetable substance," the Government can not prevail. I infer from the testimony of the experts that it would be difficult if not impossible to fix any arbitrary standard by which the question could be determined, as it depends upon so many contingencies. In any event, no such standard has been fixed, in the absence of which each case must be determined on its own facts, and when it appears, as in this case, that the product is so far decomposed as to be unfit for food, it comes within the letter and spirit of the law. It was also urged that since there is no proof that the product in question would be injurious to health, a verdict should be ordered in favor of the claimant, but I do not understand that such proof is necessary or required under the provisions of the Food and Drugs Act, on which this proceeding is based. The object of the law is to prevent the manufacture or interstate shipment of adulterated food, and when food is adulterated so as to "consist in whole or in part of filthy, decomposed, or putrid animal or vegetable substance," its interstate shipment is prohibited, whether its use would be injurious to health or not.

The recent decision of the Supreme Court, while not at hand, involved, as I understand from the press report, the construction of the fifth subdivision of section 7, and not the one involved in this controversy.

I conclude, therefore, that the motions for nonsuit and directed verdict should be overruled, and that a decree should be entered in favor of the Government, as prayed for in the libel.

On March 10, 1914, a formal decree of condemnation and forfeiture was entered and it was ordered by the court that the product should be dealt with or destroyed in conformity with the instructions of the Secretary of Agriculture of the United States and usual in such cases.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3373. Adulteration of tomato catsup. U. S. v. 10 Cases * * * Adulterated Tomato Catsup. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5495. I. S. No. 3034-h. S. No. 2059.)

On December 18, 1913, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 10 cases, each containing six 1-gallon bottles of adulterated tomato catsup, remaining unsold in the original unbroken packages at Portland, Oreg., alleging that the product had been shipped on or about November 15 [5], 1913, and transported from the State of California into the State of Oregon, and charging adulteration in violation of the Food and Drugs Act. The shipping containers were branded: "6 only—1 gal. C. Z. E. Pkrs. Flint Red Rose Brand Catsup" (Top of case) "Glass With Care M. M. C. Co. Portland, Or." Each of the bottles in said cases was branded: "Red rose (Picture of rose) Catsup Put up by Lewis Packing Co., San Francisco, Cal. Prepared from Fresh Ripe Tomatoes without Fermentation. Not Artificially Colored. Made from Whole Ripe Tomatoes. Flavored and Preserved with Sugar, Glucose, Salt, Vinegar, Pure spices and One-fifth of one per cent Benzoate of Soda."

Adulteration of the product was alleged in the libel for the reason that said catsup consisted in whole or in part of filthy, decomposed, and [or] putrid vegetable substance.

On February 26, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be dealt with or destroyed in conformity with instructions of the Secretary of the Department of Agriculture and usual in such cases.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3374. Adulteration and misbranding of malt extract. U. S. v. P. Ballantine & Sons. Plea of non vult. Fine, $50.** (F. & D. No. 5502. I. S. No. 2516-e.)

On March 27, 1914, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against P. Ballantine & Sons, a corporation, Newark, N. J., alleging shipment by said company in violation of the Food and Drugs Act, on or about May 29, 1912, from the State of New Jersey into the State of Pennsylvania, of a quantity of Ballantine's Ideal Malt Extract, which was adulterated and misbranded. The product was labeled: "Average quantity Alcohol contained 3 7/10 per cent by volume. Ballantine's Ideal Malt Extract P. Ballantine & Sons, 134 Cedar St., New York. Foot Fulton St., Newark, N. J. A fully matured preparation of

malt, with a delicate flavor. It is grateful to the weakest stomach. Recommended by eminent physicians for its purity. Convalescents enjoy its agreeable and bracing effects. This extract is thoroughly ripened, carefully bottled and pasteurized. The malt is especially prepared; the hops selected and the whole carefully brewed and aged. This product of over seventy years' experience in brewing is the Ideal Malt Extract. Directions * * *. (Analysis furnished physicians on application.)"

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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|---|---|
| Alcohol (per cent by volume) | 3.23 |
| Extract (per cent by weight) | 8.34 |
| Extract original wort (per cent by weight) | 13.48 |
| Degree fermentation | 37.39 |
| Volatile acid as acetic (grams per 100 cc) | 0.019 |
| Total acid as lactic (grams per 100 cc) | 0.223 |
| Maltose (per cent) | 4.46 |
| Dextrin (per cent) | 2.96 |
| Ash (per cent) | 0.177 |
| Protein (per cent) | 0.309 |
| Undetermined (per cent) | 0.43 |
| $P_2O_5$ (per cent) | 0.049 |
| Polarization, undiluted (°V.) | 58 |
| Color (degrees in ¼-inch cell, Lovibond) | 50 |

This is not a malt extract because it is a fermented product and does not contain diastase. Further, it is not made from malt alone, some cereal or cereal products having been substituted in part for malt.

Adulteration of the product was alleged in the information for the reason that a beverage made in part from hops and a cereal substance or substances other than malt had been substituted wholly or in part for true malt extract, a beverage prepared exclusively from malt, which said article of food purported to be. Misbranding was alleged for the reason that the label aforesaid bore the following statement, to wit, "Malt Extract," which said statement was false and misleading in that it purported and represented to purchasers of said article of food that the same was true malt extract, a beverage prepared exclusively from malt, whereas, in truth and in fact, it was not a true malt extract, but a beverage prepared in part from hops and a cereal substance or substances other than malt. Misbranding was alleged for the further reason that the said label bore the statement, "A fully matured preparation of malt," which said statement was false and misleading in that it purported and represented to purchasers of said article of food that the same was prepared exclusively from malt, whereas, in fact, the same was not prepared exclusively from malt, but was prepared in part from hops and a cereal substance or substances other than malt. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser, in that the statement "Malt Extract," and the statement "A fully matured preparation of malt" purported and represented that said article of food was a true malt extract, a beverage prepared exclusively from malt, whereas, in fact, the same was not a true malt extract, but a beverage prepared in part from hops and a cereal substance or substances other than malt.

On April 14, 1914, the defendant company entered a plea of non vult to the information and the court imposed a fine of $50.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3375. Adulteration and misbranding of malt tonic. U. S. v. Ebling Brewing Co. Plea of guilty. Fine, $50. (F. & D. No. 5503. I. S. No. 1146–e.)**

On March 25, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district two informations against the Ebling Brewing Co., a corporation, New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act, on September 6 and 7, 1912, from the State of New York into the State of Massachusetts, of quantities of so-called malt tonic which was adulterated and misbranded. The product was labeled: "Malt-Tonic Concentrated Malt Extract Pure Malt German Hops Put up in Sterile bottles and Pasteurized with the utmost care For Medicinal Use—Not a Beverage Superior in quality to Extracts of Malt usually found on the market. In this Malt will be found sterling merit in Weakness, Chronic Debility, Dyspepsia, Nervous Exhaustion and Malnutrition. It is especially adapted to nursing mothers, supplying strength to meet the unusual demand upon the system during the period of lactation, improving the quality and quantity of the milk in increasing the amount of Sugar and Phosphates thereby nourishing the infant and at the same time sustaining the mother. In sleeplessness it produces refreshing and natural rest. Directions—A wineglassful with each meal and on going to bed, or as may be directed by the physician. Children in proportion to age. This preparation contains from 3 to 4 per cent. alcohol naturally produced and guaranteed under the national pure food law enacted June 30, 1906 Serial No. 13149. Prepared for Haskell, Adams & Co., New England Distributors Boston, Mass. Dover, N. H."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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| Alcohol (per cent by volume) | 5.40 |
| Extract (per cent by weight) | 7.35 |
| Extract original wort (per cent by weight) | 15.99 |
| Degree fermentation | 54.10 |
| Volatile acid as acetic (grams per 100 cc) | 0.029 |
| Total acid as lactic (grams per 100 cc) | 0.243 |
| Maltose (per cent) | 2.21 |
| Dextrin (per cent) | 3.59 |
| Ash (per cent) | 0.202 |
| Protein (per cent) | 0.472 |
| Undetermined (per cent) | 0.88 |
| $P_2O_5$ (per cent) | 0.074 |
| Polarization, undiluted (°V.) | +50 |
| Color (degrees in ¼-inch cell, Lovibond) | 32 |

Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, and differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia official at the time of investigation of the said article, in that said Pharmacopœia specifies that malt extract should be made exclusively from malt, whereas, in truth and in fact, the said article of drugs was not made exclusively from malt, but [in part] from a cereal or cereal product other than malt. Misbranding was alleged in the informations for the reason that the statements, "Malt Tonic. Concentrated Malt Extract. Pure Malt—German Hops," borne on the label, were false and misleading in that they conveyed the impression that the product aforesaid was prepared exclusively from malt and hops, whereas, in truth and

in fact, the same was not prepared exclusively from malt and hops, but was prepared in part from a cereal or cereal product other than malt.

On April 6, 1914, the defendant company withdrew its plea of not guilty previously entered and entered its plea of guilty to the informations, and the court imposed a fine of $25 on each information, or a total fine of $50.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3376. Adulteration of nutmegs. U. S. v. 94 Sacks of Nutmegs. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5504. I. S. Nos. 7702-h, 7703-h. S. No. 2067.)

On December 29, 1913, the United States attorney for the Eastern District of Pennsylvania, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 94 sacks of nutmegs, 60 of which contained 130 pounds and 34 of which contained 120 pounds of nutmegs, remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been shipped on or about December 9, 1913, and transported from the State of New York into the State of Pennsylvania, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Sing-A-G-A-I-New York from Strait Settlements."

Adulteration of the product was alleged in the libel for the reason that it consisted wholly or in part of a filthy and decomposed animal substance; adulteration was alleged for the further reason that the product consisted in whole or in part of a filthy and decomposed vegetable substance.

On February 20, 1914, Lewis German & Co., New York, N. Y., claimants, having admitted the adulteration of the product, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimants upon payment of all the costs of the proceedings and the execution of bond in the sum of $3,000, in conformity with section 10 of the act.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3377. Misbranding of macaroni. U. S. v. 18 Boxes of Macaroni, More or Less. Default decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 5507. S. No. 2069.)

On December 26, 1913, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 18 boxes of macaroni, more or less, remaining unsold in the original unbroken packages at Baltimore, Md., alleging that the product had been transported from the State of Pennsylvania into the State of Maryland, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: "White Star of Italy Gragnano Style Near NAPOLI Trade Mark Manufactured by Antonio Ciricola Artificial Coloring Guaranteed by the Pure Food Act June 30, 1906, Serial No. 52687."

Misbranding of the product was alleged in the libel because the use of the statement on label, "White Star of Italy," and the word "Gragnano," the name of a village in Italy where there is a large macaroni industry, and the word "Napoli," with modification in very inconspicuous type by intervening words "style near," was false and misleading in that foreign origin of the said macaroni was implied, when in fact said product was domestic. Misbranding of the product was alleged for the further reason that the incorrect use

of the serial guaranty legend that said product was "guaranteed by the Pure Food Act," in that said statement gave the impression that the product was guaranteed by the Government, whereas said impression was false and misleading.

On March 4, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be sold by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3378. Adulteration and misbranding of macaroni. U. S. v. 100 Boxes of Macaroni. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5509. I. S. No. 1092-h. S. No. 2073.)

On January 7, 1914, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 boxes of macaroni, remaining unsold in the original, unbroken packages at Johnstown, Pa., alleging that the product had been shipped on or about October 30, 1913, by the Massaro Macaroni Co., Fulton, N. Y., and transported from the State of New York into the State of Pennsylvania, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Qualita Italiana Soppraffina Vegetable Colored 22 lbs.—When packed La Nazionale Brand Macaroni Gragnano Style Forati Guaranteed under the Food and Drug Act June 30, 1906. Serial No. 38478. Made in Fulton, N. Y. Trade Mark Registered."

Adulteration of the product was alleged in the libel for the reason that it was colored so as to make it appear to be manufactured from durum semolina, whereas a flour inferior to durum semolina for macaroni-making purposes had been used. Misbranding was alleged for the reason that the product was labeled and branded so as to deceive and mislead the purchaser, that is to say, was branded and labeled "Qualita Italiana Soppraffina La Nazionale" and design imitation Italian coat of arms, and use of word "Gragnano," which indicated that it was a product of Italy, when, in truth and in fact, it was manufactured in Fulton, N. Y.

On March 19, 1914, the said Massaro Macaroni Co. (Inc.), claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon payment of the costs of the proceedings and the execution and delivery of a good and sufficient bond, in conformity with section 10 of the act, one of the conditions being that the product should be rebranded to comply with the Food and Drugs Act.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3379. Adulteration of dried apples. U. S. v. 87 Sacks of Dried Apples, More or Less. Consent decree of condemnation and forfeiture as to 43 bags of the product and destruction of same ordered. Order of release entered as to 44 bags of the product.** (F. & D. No. 5537. I. S. No. 6081-h. S. No. 2087.)

On January 20, 1914, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 87 sacks of dried apples, remaining unsold in the original unbroken packages at Baltimore, Md., alleging that the product had been transported from the

State of Ohio into the State of Maryland, charging adulteration in violation of the Food and Drugs Act. The product was labeled: "R. S. Jackson & Co., Baltimore, Md.—From Wise & Son, Eggs, Poultry, Game, Furs, Pelts & Roots, Coolville, Ohio."

It was alleged in the libel that the product was adulterated because it consisted of a filthy, putrid, and [or] decomposed vegetable substance, to wit, to be covered by insect excreta.

On March 12, 1914, Wise & Son, claimants, Coolville, Ohio, having consented thereto, judgment of condemnation and forfeiture was entered as to 43 bags of the product and the same were ordered destroyed by the United States marshal. Upon motion of the United States attorney it was further ordered, adjudged, and decreed that 44 bags of the product, which upon examination and analysis were shown to be fit for use and not adulterated within the meaning of the Food and Drugs Act, should be released and delivered to the said claimants.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3380. Adulteration and misbranding of apple brandy type. U. S. v. The F. P. Gluck Co. Plea of guilty. Fine, $15 and costs.** (F. & D. No. 5552. I. S. No. 19190-d.)

On March 24, 1914, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The F. P. Gluck Co., a corporation, Cincinnati, Ohio, alleging shipment by said company in violation of the Food and Drugs Act, on or about June 15, 1911, from the State of Ohio into the State of Montana, of a quantity of apple brandy type which was adulterated and misbranded. The product was labeled: (On one end) "Apple Brandy Type." (On other end) "Brandy Type The F. P. Gluck Co., Wholesale Liquor Dealers 101 & 103 E. Pearl St., Cincinnati, O. This article is guaranteed under the National Pure Food Law not to be adulterated or misbranded. The Gluck Co., Cincinnati, O. The F. P. Gluck Co., Wholesale Liquor Dealers and Rectifiers 101 & 103 E. Pearl St., Cincinnati, O." "Stamp No. T 22537." (Shipping tag) "Judith Basin Commercial Co., Lewiston, Mont. From The F. P. Gluck Co., Cincinnati, Ohio."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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|---|---|
| Proof | 86.0 |
| Sclids (parts per 100,000, 100° proof) | 39.0 |
| Acids, total, as acetic (parts per 100,000, 100° proof) | 50.0 |
| Esters, as acetic (parts per 100,000, 100° proof) | 36.7 |
| Aldehydes, as acetic (parts per 100,000, 100° proof) | 4.2 |
| Furfural (parts per 100,000, 100° proof) | 0.4 |
| Fusel oil (A-M by regular method) (parts per 100,000, 100° proof) | 12.9 |
| Color insoluble in water (per cent) | 22.0 |
| Color insoluble in amyl alcohol (per cent) | 12.0 |

Color, Marsh test: Natural color present.

The product consists largely of neutral spirits.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, a mixture of apple brandy and neutral spirits, had been substituted wholly or in part for a type of apple brandy which the article purported to be. Misbranding was alleged for the reason that the article of food bore as a part of the label thereof the following statement, to wit, "Apple

Brandy Type," which said statement was false and misleading, in that it purported and represented to purchasers that said article was a type of apple brandy, whereas, in truth and in fact, it was not a type of apple brandy, but was a mixture of apple brandy and neutral spirits. Misbranding was alleged for the further reason that the article of food was labeled and branded so as to mislead and deceive the purchaser, being labeled and branded "Apple Brandy Type," thereby purporting and representing that said article was a type of apple brandy, whereas, in truth and in fact, it was not a type of apple brandy, but was a mixture of apple brandy and neutral spirits.

On March 30, 1914, the defendant company entered its plea of guilty to the information and the court imposed a fine of $15, with costs of $15.60.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3381. Adulteration of pork and beans with tomato sauce. U. S. v. 500 Cases of Pork and Beans with Tomato Sauce. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5558. I. S. No. 5177-h. S. No. 2108.)

On February 4, 1914, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 500 cases, each containing 24 cans of pork and beans with tomato sauce, remaining unsold in the original unbroken packages at Kansas City, Mo., alleging that the product had been shipped on or about December 8, 1913, and transported from the State of Michigan into the State of Missouri, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "2 doz. No. 2 1/2 cans. Park Brand Pork & Beans Tomato Sauce. Packed by Thomas Canning Co., Grand Rapids, Mich."; the cans were labeled: "Park Brand Pork and Beans with Tomato Sauce. Thomas Canning Co., Grand Rapids, Mich. Thomas Canning Co., Grand Rapids, Mich. Packers of Quality. Guaranteed by Thomas Canning Co. under the Food and Drugs Act, June 30, 1906. Serial No. 5076. Thomas Canning Co. Packers of Quality. Grand Rapids, Mich. Contents 2 Lbs. Park Brand Pork and Beans with Tomato Sauce. Thomas Canning Co. Grand Rapids, Mich."

Adulteration of the product was alleged in the libel for the reason that each of the cans was filled with a vegetable substance which consisted in whole or in part of a filthy, decomposed, and [or] putrid vegetable substance, containing partly moldy beans, badly moldy and musty beans, and mold in said tomato sauce, and which were mixed and colored in a manner whereby damage and inferiority were concealed.

On March 28, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3382. Adulteration and misbranding of vanilla flavor. U. S. v. 1 Keg of So-called Vanilla Flavor. Default decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 5560. I. S. No. 3364-h. S. No. 2095.)

On January 29, 1914, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 keg containing 5 gallons of alleged vanilla flavor remaining unsold in the original unbroken package at the borough of Rutherford, N. J.,

alleging that the product had been shipped on or about January 19, 1914, and transported from the State of New York into the State of New Jersey, and charging adulteration and misbranding, in violation of the Food and Drugs Act. The product was labeled: "Guaranteed—Ajax Chemical Company, manufacturers of Vanilla Flavor Colored—Under the Food & Drugs Act, June 30, 1906. Serial No. 53614. Extracts, colors, flavors and oils for confectioners and bakers, 82 Fulton Street, Brooklyn, N. Y."

It was alleged in the libel that the product purported to be a vanilla flavor, whereas, in truth and in fact, it was not pure vanilla flavor and was adulterated within the meaning of the act aforesaid, in that a substance, to wit, coumarin, had been mixed and packed with the product so as to reduce and lower and injuriously affect the quality and strength thereof; and for the further reason that a substance, to wit, coumarin, had been substituted wholly or in part for vanilla flavor; and for the further reason that the product had been mixed and colored in a manner whereby damage and inferiority were concealed.

It was further alleged in the libel that the container of the product was labeled "Vanilla Flavor Colored," and thus purported to be pure vanilla flavor, and was therefore misbranded within the meaning of the act aforesaid, in that said product contained coumarin and was therefore not pure vanilla flavor and was an imitation of pure vanilla flavor, and was offered for sale under the distinctive name of an article other than what it really was. Misbranding was alleged for the further reason that the product was labeled or branded so as to deceive and mislead the purchaser.

On March 10, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3383. Adulteration and misbranding of vinegar. U. S. v. The Ohio Cider Vinegar Co. Plea of guilty. Fine, $50 and costs.** (F. & D. No. 5565. I. S. No. 7356-e.)

On March 24, 1914, the United States attorney for the Southern District of Ohio, acting upon a report of the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Ohio Cider Vinegar Co., a corporation, Cincinnati, Ohio, alleging shipment by said company in violation of the Food and Drugs Act, on or about January 22, 1913, from the State of Ohio into the State of Indiana, of a quantity of vinegar which was adulterated and misbranded. The product was labeled: "CO-BA Brand Fermented Apple Vinegar Apple Product Cincinnati."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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|---|---|
| Alcohol (grams per 100 cc) | 0.27 |
| Glycerol (grams per 100 cc) | 0.09 |
| Solids (grams per 100 cc) | 2.08 |
| Nonsugar solids (grams per 100 cc) | 1.05 |
| Reducing sugar after evaporation (grams per 100 cc) | 1.03 |
| Sugar in solids (per cent) | 49.51 |
| Polarization (°V.) | —2.6 |
| Ash (grams per 100 cc) | 0.27 |
| Alkalinity soluble ash (cc N/10 acid per 100 cc) | 16.8 |
| Total phosphoric acid (mg per 100 cc) | 8.4 |
| Acid as acetic (grams per 100 cc) | 3.53 |
| Ash in nonsugar solids (per cent) | 25.7 |

The analysis shows this product to be a mixture of cider vinegar, with a dilute solution of acetic acid, or distilled vinegar, with foreign mineral matter, and with a substance high in reducing sugar.

Adulteration of the product was alleged in the information for the reason that a substance other than fermented apple vinegar, that is to say, a substance composed wholly or in part of distilled vinegar or dilute acetic acid, and a product high in reducing sugars had been substituted wholly or in part for fermented apple vinegar which the article was represented by its label to be, and for the further reason that a substance, namely, water, had been mixed and packed with the article so as to reduce and lower and injuriously affect its quality and strength. Misbranding was alleged for the reason that the statement "Fermented Apple Vinegar Apple Product," borne on the packages in which said article was shipped and delivered for shipment, as aforesaid, was false and misleading because said statement was calculated to deceive and mislead purchasers into the belief that said article was composed wholly of fermented cider made from apples, whereas, in truth and in fact, said article was not composed wholly of fermented cider made from apples, but was an article consisting in whole, or in part, of distilled vinegar or dilute acetic acid, and a product high in reducing sugars.

On April 2, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $50 and costs of $15.20.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3384. Adulteration and misbranding of jelly. U. S. v. 150 Cases of So-Called Grape Jelly. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5570. I. S. No. 4370-h. S. No. 2104.)

On February 2, 1914, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 150 cases, each containing 2 dozen glasses of a product purporting to be grape jelly, remaining unsold in the original unbroken packages at Jersey City, N. J., alleging that the product had been shipped on or about October 20, 1913, by the Quaker City Pure Fruit & Sugar Preserve Co., Philadelphia, Pa., and transported from the State of Pennsylvania into the State of New Jersey, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: (On cases) "2 Doz. No. 10 Tumblers. Mrs. Williams Brand Pure Grape Jellies. Quaker City Pure Fruit and Sugar Preserve Co., Philadelphia." (On glasses): "Mrs Williams Brand Pure Grape Jelly. 9 oz. Made by Quaker City Pure Fruit and Sugar Preserve Co., Philadelphia, Pa."

It was alleged in the libel that the product purported to be pure grape jelly, whereas, in truth and in fact, it was not pure grape jelly, and was adulterated within the meaning of the act aforesaid in that: (1) A substance, to wit, an apple product, had been mixed and packed with the so-called grape jelly so as to reduce and lower and injuriously affect the quality and strength thereof. (2) A substance, to wit, an apple product, had been substituted wholly or in part for pure grape jelly. (3) The product had been mixed in a manner whereby damage and inferiority were concealed.

It was further alleged in the libel that each of said cases and each package in said cases were labeled "Pure Grape Jelly," whereas, in truth and in fact, the product was not a pure grape jelly and was therefore misbranded within the

meaning of the act in that the said product contained an apple product and was therefore not pure grape jelly and was an imitation of pure grape jelly and was offered for sale under the distinctive name of an article other than what it really was, and for the further reason that said product was labeled or misbranded so as to deceive and mislead the purchaser.

On February 27, 1914, William M. Cargen, trading as the Quaker City Pure Fruit & Sugar Preserve Co., Philadelphia, Pa., claimant, having filed his answer to the libel, consenting to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $500, in conformity with section 10 of the act.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3385. Adulteration and misbranding of tomato paste. U. S. v. 40 Cases of Tomato Paste. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5575. I. S. No. 3366-h. S. No. 2106.)

On or about February 5, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 40 cases of tomato paste, 20 of which contained 100 1-pound cans, and the remaining 20 contained 20 5-pound cans, of tomato paste, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about December 6, 1913, and transported from the State of New Jersey into the State of New York, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Parma Brand Conserva di Pomidoro Tomato Paste—Containing 1/20 of 1% Benzoate of Soda—Parma, Luigi Vecchi, Inc., New York—Factory, Hazlet, N. J.—Contents 15 oz. net. Best in the world."

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of a filthy, putrid, and [or] decomposed vegetable substance. Misbranding was alleged for the reason that said product was labeled "Best in the World," which label was false and misleading in that said product contained mold filaments, yeasts, spores and fragments of decayed tomato.

On February 25, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3386. Misbranding of cottonseed cake. U. S. v. 300 Sacks of Cottonseed Cake. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5581. I. S. No. 8801-h. S. No. 2109.)

On February 7, 1914, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 300 sacks of cottonseed cake, remaining unsold in the original unbroken packages at Kansas City, Mo., alleging that the product had been shipped on or about January 2, 1914, by the Riverside Cotton Oil Co., Fort Worth, Tex., and the Helfey-Coleman Co., Fort Worth, Tex., and transported from the State of Texas into the States of Kansas and Missouri, and charging misbranding in violation of the Food and Drugs Act. The product was labeled:

"100 Lbs. Cold Pressed Cotton Seed Cake Manufactured by Riverside Cotton Oil Company Fort Worth, Tex. Guaranteed Analysis:

| | |
|---|---|
| Protein | 29% |
| Fat | 6.3% |
| Crude Fiber | 25% |
| Nitrogen Free Extract | 28% |

100 lbs. Net Feeding Stuff L. B. Youngblood Director Guaranteed under the Texas law and sold subject to inspection. Guaranteed composition must be printed plainly on reverse side of this tag. The Texas Inspection Tax has been paid. W. L. Boyett, State Feed Inspector, College Station, Texas. Information Bulletins Free."

Misbranding of the product was alleged in the libel for the reason that the aforesaid label on said sacks or packages bore a statement regarding the article which was false and misleading in that it represented and stated on the labels upon said sacks or packages that each of them contained 100 pounds of the product, as stated on said labels, whereas, in truth and in fact, the said sacks or packages did not each contain 100 pounds of said product but contained less than 100 pounds of said product, and that each of said sacks or packages, so represented and stated to contain 100 pounds of the product as stated on said labels, contained but 96 pounds thereof. Misbranding was alleged for the further reason that said sacks or packages were so labeled or branded as to deceive and mislead the purchaser, in that it was represented and stated on the labels upon said sacks and packages that each of them contained 100 pounds of the product, whereas, in truth and in fact, each of such sacks and packages did not contain 100 pounds as stated on said labels, but each contained less than that amount of such product, and that each of said sacks and packages so represented and stated as containing 100 pounds of said product on said labels contained but 96 pounds [average weight].

On February 28, 1914, the said Riverside Cotton Oil Co., claimant, having admitted the allegations in the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $500, in conformity with section 10 of the act.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3387. Adulteration and misbranding of butter. U. S. v. 20 Tubs, More or Less, of So-Called Butter. Consent decree of condemnation and forfeiture. Released on bond.** (F. & D. No. 5588. I. S. No. 7722-h. S. No. 2112.)

On February 10, 1914, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 20 tubs, each containing about 65 pounds of a product purporting to be pure creamery butter, remaining unsold in the original unbroken packages at Sharptown, N. J., alleging that the product had been shipped on or about January 19, 1914, and transported from the State of New York into the State of Pennsylvania, from which State the said product, on or about February 2, 1914, was reshipped and transported into the State of New Jersey, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Rush—Perishable—For John Jamison, 3 S. Water St., Phila.—from William Richman—Manufacturer and Shipper—Pure Dairy Products—Fresh Cream, Milk, Unsweetened condensed milk and Sugared condensed milk, ***** Unionville, N. Y."

It was alleged in the libel that the product purported to be pure creamery butter, whereas, in truth and in fact, the said product was not pure butter and was adulterated within the meaning of the act aforesaid, in that a substance, to wit, water, had been mixed and packed with the so-called butter so as to reduce and lower and injuriously affect the quality and strength thereof, and for the further reason that the product had been mixed in a manner whereby damage and inferiority were concealed. It was further alleged in the libel that the containers of the butter did not bear any statement or declaration that the product contained an excessive amount of water, when in fact it was shipped as and purported to be pure creamery butter and was therefore misbranded within the meaning of the act aforesaid, in that product was an imitation of and was offered for sale under the distinctive name of an article, to wit, pure creamery butter, other than what it really was.

On March 17, 1914, William Richman, claimant, having consented to the entry of a decree, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be delivered to said claimant upon payment of the costs of the proceedings and the execution and delivery of a good and sufficient bond in the sum of $500, in conformity with section 10 of the act.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3388. Adulteration and misbranding of jelly. U. S. v. 100 Cases of a Product Purporting to be Pure Grape Jelly. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5590. I. S. No. 3368-h. S. No. 2115.)

On or about February 13, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cases, more or less, each containing 2 dozen packages of a product purporting to be grape jelly, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about January 6, 1914, and transported from the State of Pennsylvania into the State of New York, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cases were labeled: "Two Dozen Tumblers Warfield Brand Pure Grape Jellies, Seeman Brothers. Distributors, New York." The packages in the cases were each labeled: "Warfield Pure Grape Jelly, Seeman Bros., Wholesale Distributors, N. Y. Contents 9 oz."

Adulteration of the product was alleged in the libel for the reason that it had mixed with it an applied [apple] product, so as to reduce and lower and injuriously affect its quality and strength; and, further, said product contained a substance which had been substituted in part for the article represented as pure grape jelly. Misbranding was alleged for the reason that said product was labeled, "Pure Grape Jelly," in that said product consisted in large part of an apple product and was offered for sale under the distinctive name of another article.

On March 4, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3389. Misbranding of mineral water. U. S. v. 250 Cases, More or Less, of Mineral Water. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5591. I. S. No. 2200-h. S. No. 2116.)

On February 14, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 250 cases, more or less, of mineral water known as "Salvator Magnesia Spring Water," remaining unsold in the original unbroken packages at Chicago, Ill., alleging that the product had been shipped on January 31, 1914, by the Salvator Mineral Springs Co., Green Bay, Wis., and transported from the State of Wisconsin into the State of Illinois, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: "All Water Bottled at Springs. Salvator Magnesia Spring Water Medicinal. Highest award at the World's Columbian Exposition The Salvator Mineral Springs Company Green Bay, Wisconsin, U. S. A.

Prof. De La Fontaine's Analysis.

| In one gallon. | Grains. |
|---|---|
| Chloride of sodium | 1.6 |
| Bi-carb of sodium | 1.3 |
| Bi-carb of calcium | 20.00 |
| Bi-carb of magnesium | 17.6 |
| Bi-carb of iron | 1.3 |
| Total | 41.8 |

Bacteriologically Pure

Wisconsin State Board of Health.

| | Parts per 100,000. |
|---|---|
| Total Residue | 40.30 |
| Mineral Residue | 20.20 |
| Volatile Residue | 11.10 |

To which they add there is no evidence of organic pollution either vegetable or animal in this water A Specific for Diabetes, Bright's disease, Rheumatism, Gout and all diseases of the Stomach, Bladder, Liver and Heart. Natures own remedy. Recommended to be valuable in dyspepsia, indigestion associated with undue acidity of the stomach, congestion of the liver accompanied by sluggish portal circulation, in diabetes and gout and in all chronic catarrhal affections of the mucous membranes of the respiratory, digestive and genital organs. Drs. G. M. Stables & Son"

Misbranding of the product was alleged in the libel for the reason that each of the bottles filled with the article of medicine or drug bore a label in words and figures as aforesaid, which said label borne upon each of the bottles was false and misleading in that the label aforesaid purported to state that the article of medicine or drug aforesaid, to wit, the Salvator magnesia spring water, was a specific for diabetes, Bright's disease, rheumatism, gout, and all diseases of the stomach, bladder, liver, and heart, whereas in truth and in fact the article of medicine or drug aforesaid, to wit, the Salvator magnesia spring water aforesaid, was not a specific for diabetes, Bright's disease, rheumatism, gout, and all diseases of the stomach, bladder, liver, and heart, nor a specific for any one or more of the said diseases. Misbranding was alleged for the further reason that said label, borne upon each of the bottles, contained a statement regarding the curative effect of such article of medicine or drug which was false and fraudulent in that the label aforesaid purported to state that the article of medicine or drug aforesaid, to wit, the Salvator magnesia spring water, was a specific for diabetes, Bright's disease, rheumatism, gout, and all diseases of the stomach, bladder, liver, and heart, whereas in truth and

in fact the article of medicine or drug aforesaid, to wit, the Salvator magnesia spring water aforesaid, was not a specific for diabetes, Bright's disease, rheumatism, gout, and all diseases of the stomach, bladder, liver, and heart, nor a specific for any one or more of the said diseases. Misbranding was alleged for the further reason that said label borne upon each of the bottles aforesaid contained a statement regarding the therapeutic effect of such article of medicine or drug which was false and fraudulent in that the said label purported to state that the article of medicine or drug was a specific for diabetes, Bright's disease, rheumatism, gout, and all diseases of the stomach, bladder, liver, and heart, whereas in truth and in fact it was not a specific for diabetes, Bright's disease, rheumatism, gout, and all diseases of the stomach, bladder, liver, and heart, nor a specific for any one or more of the said diseases. Misbranding was alleged for the further reason that said label borne upon each of the bottles aforesaid was false and fraudulent in that said label contained a statement regarding the curative effect of said article of medicine or drug which purported to state that the article of medicine or drug aforesaid, to wit, the Salvator magnesia spring water aforesaid, was valuable in dyspepsia, indigestion associated with undue acidity of the stomach, congestion of the liver accompanied by sluggish portal circulation, in diabetes and gout, and in all chronic catarrhal affections of the mucous membranes of the respiratory, digestive, and genital organs, whereas in truth and in fact the article of medicine or drug aforesaid, to wit, the Salvator magnesia spring water aforesaid, was not valuable in dyspepsia, indigestion associated with undue acidity of the stomach, congestion of the liver accompanied by sluggish portal circulation, in diabetes and gout, and in all chronic catarrhal affections of the mucous membranes of the respiratory, digestive, and genital organs, nor in any one of the said diseases, ailments, disorders, or affections. Misbranding was alleged for the further reason that the label borne upon each of the bottles aforesaid was false and fraudulent in that said label contained a statement regarding the therapeutic effect of said article of medicine or drug which purported to state that the article of medicine or drug, to wit, the Salvator magnesia spring water aforesaid, was valuable in dyspepsia, indigestion associated with undue acidity of the stomach, congestion of the liver accompanied by sluggish portal circulation, in diabetes and gout, and in all chronic catarrhal affections of the mucous membranes of the respiratory, digestive, and genital organs, whereas in truth and in fact the article of medicine or drug aforesaid, to wit, the Salvator magnesia spring water, was not valuable in dyspepsia, indigestion associated with undue acidity of the stomach, congestion of the liver accompanied by sluggish portal circulation, in diabetes and gout, and in all chronic catarrhal affections of the mucous membranes of the respiratory, digestive, and genital organs, nor in any one of the said diseases, ailments, disorders, or affections.

On March 25, 1914, the case having come on for final hearing upon the libel and the answer of the claimants herein, Charles J. Oberweiser, Frank A. Daniels, and Joseph L. Fitzgibbons, copartners, doing business under the name of The Salvator Mineral Springs Co., admitting all the material allegations in the libel, and the court having read and considered the same and having heard the arguments of counsel, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be surrendered and delivered to said claimants upon payment of the costs of the proceedings and the execution of a good and sufficient bond in the sum of $2,000, in conformity with section 10 of the act, one of the conditions of the bond being that the claimants aforesaid should relabel each of the bottles so that there should be obliterated from said label appearing upon each of the bottles, and so that

there should not appear upon any new label placed upon each of the bottles, the words and figures as follows, to wit:

Prof. De La Fontaine's Analysis.

| In one gallon | Grains |
|---|---|
| Chloride of sodium | 1.6 |
| Bi-carb of sodium | 1.3 |
| Bi-carb of calcium | 20.00 |
| Bi-carb of magnesium | 17.6 |
| Bi-carb of iron | 1.3 |
| Total | 41.8 |

Bacteriologically Pure

Wisconsin State Board of Health.

| | Parts per 100,000 |
|---|---|
| Total Residue | 40.30 |
| Mineral Residue | 20.20 |
| Volatile Residue | 11.10 |

To which they add there is no evidence of organic pollution either vegetable or animal in this water. A Specific for Diabetes, Bright's disease, Rheumatism, Gout and all diseases of the Stomach, Bladder, Liver and Heart. Natures own remedy. Recommended to be valuable in dyspepsia, indigestion associated with undue acidity of the stomach, congestion of the liver accompanied by sluggish portal circulation in diabetes and gout and in all chronic catarrhal affections of the mucous membranes of the respiratory, digestive and genital organs. Drs. G. M. Stables & Son" and also that the word "medicinal" appearing immediately after the words "Salvator Magnesia Spring Water" and before the words "Highest award at the World's Columbian Exposition," borne upon the center portion of the label aforesaid, appearing upon each of the bottles aforesaid, should be obliterated, and so that the said label borne upon each of the bottles aforesaid, packed in the 230 cases aforesaid, when so modified by obliterating the portions hereinabove set forth, should contain the following words, together with the representations of the obverse and reverse sides of a certain medal of award granted to The Salvator Mineral Springs Company by the World's Columbian Exposition, and no other words, figures or representations of medals of award: "All Water Bottled at Springs. Salvator Magnesia Spring Water Highest award at the World's Columbian Exposition The Salvator Mineral Springs Company Green Bay, Wisconsin, U. S. A."

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3390. Misbranding of coffee. U. S. v. 20 Sacks, More or Less, of Coffee. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5611. I. S. No. 7359-h. S. No. E. 1.)

On March 5, 1914, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 20 sacks, each containing approximately 120 pounds of an article of food purporting to be Maracaibo coffee, remaining unsold in the original unbroken packages at Philadelphia, Pa, alleging that the product had been shipped on or about January 31, 1914, and transported from the State of New York into the State of Pennsylvania, and charging misbranding in violation of the Food and Drugs Act. The product was invoiced as "20 Bags Maracaibo Coffee."

Misbranding of the product was alleged in the libel for the reason that it purported to be, was offered for sale, and was sold under the distinctive name of another article, to wit, in that it purported to be, was offered for sale, and was sold under the name of Maracaibo coffee, which is a distinctive name of a certain brand of coffee, whereas in truth and in fact the said article of food, to wit, coffee, consisted of a mixture of Maracaibo and Santos coffee.

On April 2, 1914, the Weber Coffee Co., Philadelphia, Pa., filed an answer to the libel admitting the averments thereof but denying any intention of violating the laws of the United States, and consenting to the prayer thereof and agreeing to the condemnation of the property. On April 4, 1914, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon payment of all the costs of the proceedings and the execution and delivery of a good and sufficient bond in the sum of $400, in conformity with section 10 of the act.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3391. Adulteration of dates. U. S. v. 237 Boxes, Each Containing 80 Pounds of Dates. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5612. I. S. No. 1733-h. S. No. E. 2.)

On or about March 6, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 237 boxes, more or less, each containing 80 pounds of dates, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about February 27, 1914, and transported from the State of Pennsylvania into the State of New York, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Camel Brand—Finest Selected Persian Dates—Product of Turkey—B. Karp New York, N. Y."

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of a filthy, decomposed and [or] putrid vegetable substance, to wit, dried mass of broken dates containing sugar and mouse and other kinds of excreta and live insects.

On March 23, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3392. Adulteration and misbranding of tincture of ferri chloridi. U. S. v. Fraser J. McDonald. Plea of guilty. Fine, $10.** (F. & D. No. 230-c.)

On April 24, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Fraser J. McDonald, Washington, D. C., alleging the sale by said defendant at the District aforesaid on March 3, 1914, of a quantity of tincture of ferri chloridi which was adulterated and misbranded.

Adulteration of the product was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of ferri chloridi, which said name was recognized in the United States Pharmacopœia, official at the time of investigation, and said drug differed from the standard of strength and purity as determined by the test laid down in said United States Pharmacopœia official at the time of investigation. Misbranding

was alleged for the reason that the drug was labeled and branded so as to deceive and mislead the purchaser in that the label on the bottle thereof bore the words and the phrase "Tr. Ferri Chloridi," meaning and importing to the purchaser thereof that the drug was a tincture of ferri chloridi conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On April 24, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3393. Adulteration and misbranding of tincture of ferri chloridi. U. S. v. The Thompson Drug Co. (Inc.), Milton C. Thompson, Mgr. Plea of guilty. Fine, $10.** (F. & D. No. 231–c.)

On April 25, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against The Thompson Drug Co., a body corporate, and Milton C. Thompson, Washington, D. C., alleging the sale by said defendants at the District aforesaid on February 11, 1914, of a quantity of tincture of ferri chloridi which was adulterated and misbranded.

Adulteration of the product was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of ferri chloridi, which said name was recognized in the United States Pharmacopœia, official at the time of investigation, and said drug differed from the standard of strength and purity as determined by the test laid down in said United States Pharmacopœia official at the time of investigation. Misbranding was alleged for the reason that the drug was labeled and branded so as to deceive and mislead the purchaser in that the label on the bottle thereof bore the words and the phrase "Tr. Ferri Chloridi," meaning and importing to the purchaser thereof that the drug was a tincture of ferri chloridi conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On April 25, 1914, the defendant Milton C. Thompson, for the company, entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3394. Adulteration and misbranding of tincture of ferri chloridi. U. S. v. Otis H. Wood. Plea of guilty. Fine, $10.** (F. & D. No. 232–c.)

On April 27, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Otis H. Wood, Washington, D. C., alleging the sale by said defendant at the District aforesaid, on March 18, 1914, of a quantity of tincture of ferri chloridi which was adulterated and misbranded.

Adulteration of the product was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of ferri chloridi, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and said drug differed from the standard of strength and purity as determined by the test laid down in said United States Pharmacopœia official at the time of investigation. Misbranding was alleged for the reason that the drug was labeled and branded so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore

the words and phrase "Tr. Ferri Chloridi," meaning and importing to the purchaser thereof that the drug was a tincture of ferri chloridi conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On April 27, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3395. Adulteration of cream. U. S. v. Philip H. Cline. Plea of guilty. Fine, $10.** (F. & D. No. 233–c.)

On May 9, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of said District an information against Philip H. Cline, Cacoctin, Md., alleging shipment by said defendant in violation of the Food and Drugs Act, on April 21 and 28, 1914, from the State of Maryland into the District of Columbia of quantities of cream which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food, to wit, butter fat, was left out and abstracted in whole and in part.

On May 9, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3396. Adulteration of cream. U. S. v. Chas. G. Geisbert. Plea of guilty. Fine, $10.** (F. & D. No. 234–c.)

On May 22, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of said District an information against Chas. G. Geisbert, Buckeystown, Md., alleging shipment by said defendant in violation of the Food and Drugs Act, on April 24 and 25, 1914, from the State of Maryland into the District of Columbia, of quantities of cream which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food, to wit, butter fat, was left out and abstracted in whole and in part.

On May 22, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3397. Alleged misbranding of Hurdle Brand Holland Gin. U. S. v. 5 Cases of a Liquid Food Known as "Hurdle Brand Holland Gin." Tried to the court. Finding in favor of claimant. Order dismissing libel and directing marshal to release goods.** (F. & D. No. 537. S. No. 191.)

On March 26, 1909, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Supreme Court of said District a libel, and on August 24, 1909, an amended libel, for the seizure and condemnation of 5 cases, each containing 12 bottles of a liquid food known as Hurdle Brand Holland Gin, remaining unsold in the original unbroken packages at Washington, D. C., alleging that the product had been shipped on March 15, 1909, and transported from the State of New York into

the District of Columbia, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: (On cases) In the upper left-hand corner are the initials "B. D. Co."; about the middle thereof is a circular design with the words "Hurdle Brand Geneva," and in the center of said circular design is a picture of a horse jumping over a hurdle; in the lower right-hand corner are the words "Hurdle Brand Holland Gin." (On bottles) "Superfine Double Distilled Holland Gin Hurdle (picture of horse and rider jumping over hurdle) Brand Geneva Distilled By Baird-Daniels Co. Warehouse Point, Conn. Guaranteed under the National Pure Food Law."

Misbranding of the product, in so far as concerned the labels on the cases, was alleged in the amended libel for the reason that said gin was labeled and branded so as to deceive and mislead the purchaser thereof and purported to be a foreign product, when not so, for the reason that the use of the words "Holland" and "Geneva," both singly and in connection with each other, upon the said label in manner and form as aforesaid, signified and imported that said gin had been distilled within the Province of Holland, in the Kingdom of the Netherlands, Europe, and after so having been distilled had been imported into the United States from the said Province of Holland, whereas the said gin had not been distilled in the said Province of Holland, nor imported therefrom into the said United States, but, in fact, the same had been distilled within the said United States at Warehouse Point, in the State of Connecticut. Misbranding in so far as concerned the labels on the bottles was alleged in the amended libel for the reason that said gin was labeled and branded so as to deceive and mislead the purchaser thereof and purported to be a foreign product, when not so, for the reason that the use of the words "Holland" and "Geneva," both singly and in connection with each other, upon the said label in manner and form aforesaid signified and imported that the said gin had been distilled within the Province of Holland, in the Kingdom of the Netherlands, Europe, and after so having been distilled had been imported into the said United States from the said Province of Holland, whereas the said gin had not been distilled in the said Province of Holland, nor imported therefrom into the said United States, but, in fact, the same had been distilled within the said United States at Warehouse Point, in the State of Connecticut.

On November 18, 1909, Albert E. Beitzel, claimant, Washington, D. C., filed his demurrer to the amended libel, and on January 7, 1910, the same was overruled by the court, and thereafter, on February 4, 1910, the answer of said claimant was filed. On November 25, 1913, the case having come on for final hearing, after the submission of evidence in the form of depositions and argument by counsel, the following opinion was rendered by the court (Gould, *J.*):

OPINION OF THE COURT.

The questions involved in this case are raised by a libel filed by the United States under the act of Congress of June 30, 1906 (commonly known as the Food and Drugs Act), in which it is sought to condemn 5 cases, containing 12 bottles each, of a liquid called gin, on the ground that the same are misbranded. The misbranding is charged to consist in labeling the liquid in such manner as to deceive a purchaser into the belief that it is a foreign product distilled in Holland, in the Kingdom of the Netherlands, whereas it was in fact distilled at Warehouse Point, in the State of Connecticut. The claimants are A. E. Beitzel, in whose possession the gin was found, and the Baird-Daniels Co., which distilled it. The label, a facsimile of which contains the alleged misbranding, appears in the libel.

Section 8 of the Food and Drugs Act provides as follows:

"SEC. 8. That the term 'misbranded' as used herein shall apply to all drugs or articles of food or articles which enter into the composition of food, the pack-

age or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

* * * * * * *

"In the case of food:

"First. If it be an imitation of or offered for sale under the distinctive name of another article.

"Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so.

* * * * * * *

"Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular."

On January 31, 1908, the department promulgated what is designated as regulation 19, which deals with the questions raised by the instant case. It reads as follows:

"(*b*) The use of a geographical name shall not be permitted in connection with a food or drug product not manufactured or produced in that place when such name indicates that the article was manufactured or produced in that place.

"(*c*) The use of a geographical name in connection with a food or drug product will not be deemed a misbranding when by reason of long usage it has come to represent a generic term and is used to indicate a style, type, or brand; but in all such cases the State or Territory where any such article is manufactured or produced shall be stated upon the principal label.

"(*d*) A foreign name which is recognized as distinctive of a product of a foreign country shall not be used upon an article of domestic origin except as an indication of the type or style of quality or manufacture, and then only when so qualified that it can not be offered for sale under the name of a foreign article."

Two questions are thus presented for decision:

First. Has the word "Holland," by reason of long usage, come to represent a generic term as applied to gin?

Second. Does the label fairly state the State or Territory where the article in question is manufactured?

If the word "Holland," a geographical name, when used in connection with gin, has acquired a generic meaning as indicating a particular style, type, or brand of gin; and if the place of manufacture is fairly stated upon the label, the claimant, the Baird-Daniels Co., would appear to have complied with the law. Probably the larger question, suggested by the terms of the statute itself, is also involved, viz, whether the label is such as to deceive or mislead a purchaser or purports to be upon a foreign product when not so. For, as Attorney General Wickersham once said, one of the main purposes of the pure-food law is to prevent deception being practiced on the public.

First. The testimony for both the libelant and claimant leaves no room for doubt that Holland gin is essentially a distinct type or kind of gin, differing from either a dry gin or a sloe gin. The experts, having practical knowledge of the methods used in producing each kind, state that the Holland gin is an alcoholic beverage made from small grains, specifically rye, barley, and barley malt, and that, in the distilling, the essential oils of the grain are retained and the fusel oils eliminated, thus giving the liquor its peculiar flavor and rendering it a "Holland" gin, with or without the addition of juniper berries. In a dry gin, on the other hand, the essential oils are entirely eliminated and the pure neutral spirit is distilled from a variety of flavoring materials, one of which is usually juniper berries. The evidence clearly establishes the distinct characters and qualities of the two kinds of gin, the first known as Holland gin and the second as English or dry gin.

It may be observed, although not especially significant, that while Holland gin received its name from the fact that it was distilled in Holland, the evidence shows that the elements are not grown or produced in Holland. The grain is obtained by Holland distillers from Russia, Austria, and the United States and the juniper berries from Italy or Germany.

The evidence also establishes the fact that gin having the genuine characteristics of Holland gin has been manufactured in this country for at least 18 years.

The standard dictionaries and encyclopedias to which it is permitted to resort as authoritative sources for information in such case (U. S. *v.* Corneo Feed, 188 Fed. Rep., 453) makes clear the distinctive character of Holland gin. The Century Dictionary and Cyclopedia, volume 3, page 2516, under the word "gin," says:

"Gin. Abbreviation of Geneva, or rather of the older form genever * * * see geneva, juniper. An aromatic spirit prepared from rye or other grain and flavored with juniper berries. The two important varieties of gin are Dutch gin, also called Holland and Schiedam, and English gin, known often by the name 'Old Tom.' Holland gin is almost free from sweetness and is generally purer than English."

In the eleventh edition of the Encyclopedia Brittanica, volume 12, page 26, after defining the word "gin" as "an aromatized or compounded potable spirit, the characteristic flavor of which is derived from the juniper berry," and stating that the word is an abbreviation of geneva, both being primarily derived from the French genievre (juniper) says:

"There are two distinct types of gin, namely, the Dutch geneva or Holland and British gin. Each of these types exists in the shape of numerous subvarieties. Broadly speaking, British gin is prepared with a highly rectified spirit, whereas in the manufacture of Dutch gin, a preliminary rectification is not an integral part of the process. The old-fashioned Hollands is prepared much after the following fashion: The mash, consisting of about one-third of malted barley or bere and two-thirds rye meal is prepared and infused at somewhat high temperature. After cooling the whole is set to ferment with a small quantity of yeast. After two or three days the attenuation is complete, and the wash so obtained is distilled, and the resulting distillate (the low wines) is redistilled, with the addition of the flavoring matter (juniper berries, etc.), and a little salt. Originally the juniper berries were ground with the malt, but this practice no longer obtains, but some distillers, it is believed, still mix the juniper berries with the wort and subject the whole to fermentation. When the redistillation over juniper is repeated the product is termed double (geneva, etc.)."

The testimony on behalf of the libelant fully recognized the distinctive character of Holland gin.

It is considered, therefore, that the term "Holland" in connection with the word gin is a geographical name which has become generic by reason of language and represents a style, type, or brand.

Second. The second question above suggested is answered by the label itself. In letters sufficiently large and plain to repel any suggestion that they are deceptive in fact or in intent, it is stated: "Distilled by Baird-Daniels Co., Warehouse Point, Conn."

The conclusion, therefore, is that the claimant has complied with the statute and regulations in respect to branding its product.

It was contended on behalf of the libelant that, admitting that "Holland" as applied to a gin has come to be a generic term; and admitting, further, that the label fairly states the place where the article is manufactured, yet the claimant should qualify his label by adding the word "Domestic" type, style, or process, in juxtaposition to the words "Holland Gin." Two answers to this contention suggest themselves: First. If "Holland" has become generic, and if the gin distilled by the claimant contains exactly the same ingredients and is made by the same process and is, in essence, the same identical thing as gin distilled in Holland, then it is "Holland" gin and not Holland "type," "style," or "process." In other words, it is entitled to be called what it is. Second. On the broader question as to whether the label as used is liable to deceive a purchaser into believing he is buying an imported article, it is rather difficult to understand how a customer who would fail to observe the words "Distilled by Baird-Daniels Co., Warehouse Point, Conn." plainly printed on the label, would be more liable to notice the word "style," or "type," or other similar word used in connection with the words "Holland gin."

There is also a charge of misbranding in the marking of the wooden crates or cases in which the bottles were transported, the words "Warehouse Point, Conn.," being omitted. This is stated by the claimant to be an oversight, which will be remedied. The consumer, however, does not see the crates and is not, therefore, liable to be deceived by words, or the omission of words, thereon.

On the whole case, the order will be that the libel be dismissed. The findings of fact will be made in accordance with this opinion.

FINDINGS OF FACT.

*First.*—That at the time of the filing of the libel herein and seizure made thereunder, one Albert E. Beitzel, a resident of this District, had in his possession 5 wooden boxes or cases, each containing for purposes of sale within the District of Columbia, 12 bottles of a certain liquid drink known and called Holland gin, and said gin having been distilled and produced by Baird-Daniels Co., at Warehouse Point, Conn., and said goods being guaranteed under the pure food law by said producers and distillers.

*Second.*—That upon each of the wooden boxes or cases containing the said bottles of gin, there were certain labels and statements as follows: B. D. Company; Hurdle Brand; Geneva; Hurdle Brand Holland Gin.

*Third.*—That upon each and every one of said bottles of gin contained in said cases and boxes there was a certain label of the design and tenor as follows, to wit:


*Fourth.*—That the word "Holland" as applied to gin is an adjective of the English language designating a distinctive kind or character of gin, differing in flavor from dry gins or sloe gins, and means, according to standard authorities, a gin made in Holland or like that made in Holland.

*Fifth.*—That the distinctive characteristics of Holland gin result from so treating the grains entering into its composition that their essential oils are retained, whereas in the manufacture of a dry gin the grains are so treated that their essential oils are eliminated.

*Sixth.*—That Holland gin is made in various countries and that none of the ingredients entering into its composition is indigenous to the geographical division of the world known as Holland or the Netherlands.

*Seventh.*—That the word "Holland," although possessing a geographical significance, has by long usage come to designate a particular kind or character of gin, and that the gin here in controversy is of that particular kind and is made according to standard formula.

*Eighth.*—That the word "geneva" is a noun of the English language and is the correct English word for "gin," the latter being a contraction of "geneva."

*Ninth.*—That the bottle here complained of is, in respect of shape and color, one of the usual forms of containers of Holland gin.

*Tenth.*—That every word on the label affixed to the bottle here complained of is a word of the English language, and that said label does not bear a word, symbol, or representation solely or necessarily foreign in its significance or visual effect.

*Eleventh.*—That said labels recite the State or Territory in which the gin is made and also the name of the city or town within the State and the name of the manufacturer.

*Twelfth.*—That the crates seized under the libel herein and containing the bottles in controversy do not recite the State or Territory in which the gin is made; that said crates are not the receptacles in which the gin is offered for sale to the consumer; and that the principal label figuring in this controversy is that upon the bottles.

*Thirteenth.*—That there is no testimony that any purchaser of a domestic Holland gin has ever been deceived because of a belief that the gin was of foreign origin, and that there is testimony of numerous dealers that in their experience no such mistake has ever occurred.

*Fourteenth.*—There is no evidence that any purchaser of the Baird-Daniels Holland gin involved here has ever accepted the same in the belief that it was of foreign origin.

CONCLUSIONS OF LAW.

*First.*—That said bottles of gin are not so labeled or branded as to deceive or mislead a purchaser, and that the same does not purport to be a foreign product, and that said label is not calculated to deceive a purchaser into the belief that the gin contained in said boxes was manufactured in Holland.

*Second.*—That the Baird-Daniels Co. in applying the word "Holland" to its gin is using a geographical word which by long usage represents a generic term indicating a kind, character, or style of gin; that upon the principal label bearing the word "Holland" the Baird-Daniels Co. has indicated the State or Territory in which the gin is manufactured; and that these facts are within the provisions of regulation 19(*c*) of the Department of Agriculture, and that the requirements of said regulation have been fully complied with by the Baird-Daniels Co. in the labeling of the gin in controversy.

Judgment will therefore be entered dismissing the libel and releasing the seized goods.

Thereafter, on March 2, 1914, an order was entered dismissing the libel and directing the United States marshal to release the goods, in conformity with the foregoing opinion.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3398. (Supplement to Notices of Judgment 722 and 2549.) Alleged adulteration and misbranding of bleached flour. U. S. v. 625 Sacks of Bleached Flour. Judgment of the Circuit Court of Appeals for the Eighth Circuit, reversing the judgment of the District Court of the United States for the Western District of Missouri for the condemnation, forfeiture, and destruction of the product, affirmed by the Supreme Court of the United States. Case remanded to the District Court for a new trial.** (F. & D. No. 1389. S. No. 514.)

On May 10, 1913, there was filed in the Supreme Court of the United States a petition for writ of certiorari to review the decision of the Circuit Court of Appeals for the Eighth Circuit, which reversed the judgment of the District Court of the United States for the Western District of Missouri, under which judgment 625 sacks of flour which had been shipped from Nebraska into the State of Missouri were condemned and forfeited to the United States and ordered to be destroyed. On May 13, 1913, the Lexington Mill & Elevator Co., respondent, joined in the petition for said writ of certiorari, and on May 26, 1913, said writ was granted.

On February 24, 1914, the case having theretofore been argued before the court, the judgment of the Circuit Court of Appeals reversing the judgment of the District Court was affirmed and the case remanded to the District Court

for a new trial, as will more fully appear from the following opinion by the Supreme Court of the United States (Mr. Justice Day delivered the opinion of the court):

The petitioner, the United States of America, proceeding under section 10 of the Food and Drugs Act (34 Stat., 768), by libel filed in the District Court of the United States for the Western District of Missouri, sought to seize and condemn 625 sacks of flour in the possession of one Terry, which had been shipped from Lexington, Nebr., to Castle, Mo., and which remained in original, unbroken packages. The judgment of the District Court, upon verdict, in favor of the Government, was reversed by the Circuit Court of Appeals for the Eighth Circuit (202 Fed., 615), and this writ of certorari is to review the judgment of that court.

The amended libel charged that the flour had been treated by the "Alsop process," so called, by which nitrogen peroxide gas, generated by electricity, was mixed with atmospheric air and the mixture then brought in contact with the flour, and that it was thereby adulterated under the fourth and fifth subdivisions of section 7 of the act, namely, (1) in that the flour had been mixed, colored, and stained in a manner whereby damage and inferiority was concealed and the flour given the appearance of a better grade of flour than it really was, and (2) in that the flour had been caused to contain added poisonous or other added deleterious ingredients, to wit, nitrites or nitrite reacting material, nitrogen peroxide, nitrous acid, nitric acid, and other poisonous and deleterious substances which might render the flour injurious to health. The libel also charged that the flour was adulterated under the first subdivision of section 7, and was misbranded; but the Government does not urge these features of the case here. The verdict was broad enough to cover the charge under the first subdivision of section 7, but in the view we take of the case as to the instruction of the court under subdivision 5 need not be noticed.

The Lexington Mill & Elevator Co., the respondent herein, appeared, claiming the flour, and answered the libel, admitting that the flour had been treated by the Alsop process, but denying that it had been adulterated and attacking the constitutionality of the act.

A special verdict to the effect that the flour was adulterated was returned and judgment of condemnation entered. The case was taken to the Circuit Court of Appeals upon writ of error. The respondent contended that, among other errors, the instructions of the trial court as to adulteration were erroneous and that the act was unconstitutional. The Circuit Court of Appeals held that the testimony was insufficient to show that by the bleaching process the flour was so colored as to conceal inferiority and was thereby adulterated within the provisions of subdivision 4. That court also held—and this holding gives rise to the principal controversy here—that the trial court erred in instructing the jury that the addition of a poisonous substance, in any quantity, would adulterate the article, for the reason that "the possibility of injury to health due to the added ingredient and in the quantity in which it is added, is plainly made an essential element of the prohibition." It did not pass upon the constitutionality of the act, in view of its rulings on the act's construction.

The case requires a construction of the Food and Drugs Act. Parts of the statute pertinent to this case are:

"SEC. 7. That for the purposes of this act an article shall be deemed to be adulterated: * * *

"In case of food:

"First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. * * *

"Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

"Fifth. If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health.

* * * * * * *

"SEC. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this act, and is being transported from one State, Territory, district, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, * * * shall be liable to be proceeded against in any District Court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this act, the same shall be disposed of by destruction or sale, as the said court may direct."

Without reciting the testimony in detail, it is enough to say that for the Government it tended to show that the added poisonous substances introduced into the flour by the Alsop process, in the proportion of 1.8 parts per million, calculated as nitrogen, may be injurious to the health of those who use the flour in bread and other forms of food. On the other hand, the testimony for the respondent tended to show that the process does not add to the flour any poisonous or deleterious ingredients which can in any manner render it injurious to the health of a consumer. On these conflicting proofs the trial court was required to submit the case to the jury. That court, after stating the claims of the parties, the Government insisting that the flour was adulterated and should be condemned if it contained any added poisonous or other added deleterious ingredient of a kind or character which was capable of rendering such article injurious to health; the respondent contending that the flour should not be condemned unless the added substances were present in such quantity that the flour would be thereby rendered injurious to health, gave certain instructions to the jury. Part of the charge, excepted to by the respondent, reads:

"The fact that poisonous substances are to be found in the bodies of human beings, in the air, in potable water, and in articles of food, such as ham, bacon, fruits, certain vegetables, and other articles, does not justify the adding of the same or other poisonous substances to articles of food, such as flour, because the statute condemns the adding of poisonous substances. Therefore, the court charges you that the Government need not prove that this flour or foodstuffs made by the use of it would injure the health of any consumer. It is the character—not the quantity—of the added substance, if any, which is to determine this case."

On the other hand, the respondent insisted that the law is, and requested the court to charge the jury—

"That the burden is upon the prosecution to prove the truth of the charge in the libel, that by the treatment of the flour in question by the said Alsop process it has been caused to contain added poisonous or other added deleterious ingredients, to wit, nitrites or nitrite reacting material, which may render said flour injurious to health.

"And in this connection you are further instructed that it is incumbent upon the Government to prove that any such added poisonous or other added deleterious ingredients, if any contained in said flour, are of such a character and contained in the flour seized in such quantities, conditions, and amounts as may render said flour injurious to health, and unless you find that all of such facts are so proven, you can not find against the claimant or condemn the flour in question under that charge in the libel, and if you fail to so find, your verdict upon that count or charge in the libel must be in favor of the claimant or defendant.

* * * * * * *

"The law does not prohibit the adding of nitrites or nitrite reacting material to flour, and a jury can not find for the Government or against the claimant, even if it be shown that nitrites or nitrite reacting material was added to the flour in question, unless they believe, from a preponderance of the evidence, that such addition, if any, rendered said flour injurious to the health of those who might consume the bread or other foods made from said flour."

It is evident from the charge given and refused that the trial court regarded the addition to the flour of any poisonous ingredient as an offense within this statute, no matter how small the quantity, and whether the flour might or might not injure the health of the consumer. At least such is the purport of the part of the charge above given, and if not correct, it was clearly misleading, notwithstanding other parts of the charge seem to recognize that in order to prove adulteration it is necessary to show that the flour may be injurious to health. The testimony shows that the effect of the Alsop process is to bleach or whiten the flour and thus make it more marketable. If the testimony introduced on the part of the respondent was believed by the jury, they must necessarily have found that the added ingredient, nitrites of a poisonous character, did not have the effect to make the consumption of the flour by any possibility injurious to the health of the consumer.

The statute upon its face shows that the primary purpose of Congress was to prevent injury to the public health by the sale and transportation in interstate commerce of misbranded and adulterated foods. The legislation, as against misbranding, intended to make it possible that the consumer should know that an article purchased was what it purported to be; that it might be

bought for what it really was and not upon misrepresentations as to character and quality. As against adulteration, the statute was intended to protect the public health from possible injury by adding to articles of food consumption poisonous and deleterious substances which might render such articles injurious to the health of consumers. If this purpose has been effected by plain and unambiguous language, and the act is within the power of Congress, the only duty of the courts is to give it effect according to its terms. This principle has been frequently recognized in this court. Lake County *v.* Rollins, 130 U. S., 662, 670:

"Where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

Hamilton *v.* Rathbone, 175 U. S., 414, 421:

"The cases are so numerous in this court to the effect that the province of construction lies wholly within the domain of ambiguity, that an extended review of them is quite unnecessary."

Furthermore, all the words used in the statute should be given their proper signification and effect. Washington Market Co. *v.* Hoffman, 101 U. S., 112, 115:

"We are not at liberty," said Mr. Justice Strong, "to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that signification and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, section 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times."

Applying these well-known principles in considering this statute we find that the fifth subdivision of section 7 provides that food shall be deemed to be adulterated "if it contain any added poisonous or other added deleterious ingredients *which may render such article injurious to health.*" The instruction of the trial court permitted this statute to be read without the final and qualifying words concerning the effect of the article upon health. If Congress had so intended the provision would have stopped with the condemnation of food which contained any added poisonous or other added deleterious ingredient. In other words, the first and familiar consideration is that if Congress had intended to enact the statute in that form it would have done so by choice of apt words to express that intent. It did not do so, but only condemned food containing an added poisonous or other added deleterious ingredient when such addition might render the article of food injurious to the health. Congress has here in this statute, with its penalties and forfeitures, definitely outlined its inhibition against a particular class of adulteration.

It is not required that the article of food containing added poisonous or other added deleterious ingredients must affect the public health, and it is not incumbent upon the Government, in order to make out a case, to establish that fact. The act has placed upon the Government the burden of establishing, in order to secure a verdict of condemnation under this statute, that the added poisonous or deleterious substances must be such as may render such article injurious to health. The word "may" is here used in its ordinary and usual signification, there being nothing to show the intention of Congress to affix to it any other meaning. It is, says Webster, "an auxiliary verb, qualifying the meaning of another verb by expressing ability, * * * contingency or liability, or possibility or probability." In thus describing the offense Congress doubtless took into consideration that flour may be used in many ways—in bread, cake, gravy, broth, etc. It may be consumed, when prepared as a food, by the strong and the weak, the old and the young, the well and the sick; and it is intended that if any flour, because of any added poisonous or other deleterious ingredient, may possibly injure the health of any of these, it shall come within the ban of the statute. If it can not by any possibility, when the facts are reasonably considered, injure the health of any consumer, such flour, though having a small addition of poisonous or deleterious ingredients, may not be condemned under the act. This is the plain meaning of the words and, in our view, needs no additional support by reference to reports and debates, although it may be said in passing that the meaning which we have given to the statute was well expressed by Mr. Heyburn, chairman of the committee having it in charge upon the floor of the Senate (Congressional Record, vol. 40, pt. 2, p. 1131):

"As to the use of the term 'poisonous,' let me state that everything which contains poison is not poison. It depends on the quantity and the combination.

A very large majority of the things consumed by the human family contain, under analysis, some kind of poison, but it depends upon the combination, the chemical relation which it bears to the body in which it exists as to whether or not it is dangerous to take into the human system."

And such is the view of the English courts construing a similar statute. The English statute provides (s. 3, of the sale of food and drugs act, 1875):

"No person shall mix, color, * * * or order or permit any other person to mix, color, * * * any article of food with any ingredient or material so as to render the article injurious to health."

That section was construed in Hull v. Horsnell, 68 J. P., 591, which involved preserved peas, the color of which had been retained by the addition of sulphate of copper, charged to be a poisonous substance and injurious to health. There was a conviction in the lower court. Lord Alverstone, C. J., in reversing and remitting the case on appeal, said:

"In my opinion, if the justices convicted the appellant of an offence under s. 3 of the sale of food and drugs act, 1875, on the ground that the ingredient mixed with article of food was injurious to health—that the sulphate of copper was injurious to health, and not on the ground that the peas by reason of the addition of sulphate of copper were rendered injurious to health, the conviction is clearly wrong. To constitute an offence under the latter part of s. 3 the article of food sold must, by the addition of an ingredient, be rendered injurious to health. All the circumstances must be examined to see whether the article of food has been rendered injurious to health."

We reach the conclusion that the Circuit Court of Appeals did not err in reversing the judgment of the District Court for error in its charge with reference to subdivision 5 of section 7.

The Circuit Court of Appeals reached the conclusion that there was no substantial proof to warrant the conviction, under the fourth subdivision of section 7, that the flour was mixed, colored, and stained in a manner whereby damage and inferiority was concealed. As the case is to be retried to a jury, we say nothing more upon this point.

As to the objection on constitutional grounds, it is not contended that the statute as construed by the Circuit Court of Appeals and this court is unconstitutional.

It follows that the judgment of the Circuit Court of Appeals reversing the judgment of the District Court must be affirmed and the case remanded to the District Court for a new trial.

Affirmed.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3399. Misbranding [alleged adulteration] of acid phosphate of calcium. U. S. v. 8 Barrels Purporting to Contain Acid Phosphate of Calcium. Decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 2596. I. S. No. 12564-c. S. No. 925.)

On April 15, 1911, the United States attorney for the district of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district a libel for the seizure and condemnation of 8 barrels, purporting to contain acid phosphate of calcium, remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped by the Provident Chemical Works, New York, N. Y., and transported from the State of New York into the State of Massachusetts, and charging adulteration in violation of the Food and Drugs Act. Adulteration of the product was alleged in the libel for the reason that it contained a poisonous and deleterious ingredient, to wit, arsenous oxid, which rendered it injurious to health, and for the further reason that it had been mixed and packed with a substance, to wit, calcium sulphate, which reduced and lowered and injuriously affected the quality and strength of said food.

On May 28, 1914, the Provident Chemical Works, St. Louis, Mo., filed its claim for the goods, and on May 29, 1914, the case having come on for hearing and said claimant having filed a satisfactory bond, conditioned that the product would not be sold or disposed of contrary to the provisions of the Food and Drugs Act, or the laws of any State, Territory, District, or insular possession, judgment of condemnation was entered, the court finding the product misbranded. It was further ordered that the product should be delivered to said claimant upon payment of the costs of the proceedings.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3400. Adulteration of preserves and alleged adulteration of preserves. U. S. v. Glaser, Kohn & Co. Verdict of not guilty as to counts 1, 2, 5, and 6 by direction of the court; verdict of guilty as to count 4, and not guilty as to count 3 by the jury. Fine, $200 and costs. Motion for new trial and in arrest of judgment overruled. Pending on petition for a writ of error.** (F. & D. No. 2688. I. S. No. 3433–c.)

On August 4, 1913, the United States attorney for the northern district of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district an information, in six counts, against Glaser, Kohn & Co., a corporation, Chicago, Ill., alleging the sale by said defendants on September 15, 1910, under a written guaranty in the words and figures in substance as follows, to wit:

1/15/07.

STEELE-WEDELES CO., *City.*

GENTLEMEN: Replying to your favor 10th inst., would say we hereby guarantee that all goods as furnished you hereafter will comply with the Food and Drugs Act of June 30, 1906, with the understanding, however, that if we at any time use labels or packages furnished by you, or gotten up as per your instructions, we shall not be responsible for the form or wording of same, but only guartee that goods covered by same are not adulterated. It is expressly understood that the above shall hold good until notice of revocation be given in writing.

Truly, yours,

GLASER, KOHN & CO.,

(Signed) G. D. GLASER, *Pres.*

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of a quantity of fruit preserves which was adulterated in violation of said act, which said article, having been repacked but not having been altered, adulterated, or misbranded in any manner by the purchaser thereof, was, on October 14, 1910, shipped by said purchaser from the State of Illinois into the State of Wyoming. The product was labeled: "Herald Brand Fruit Preserves Blackberry Flavor Apple Preserves 74% Blackberry Preserves 26%."

Examination of a sample of the product by the Bureau of Chemistry of this department showed mold filaments present in about one-half of all microscopic fields; yeasts and spores, about 100 per 1/60 milligram; bacteria, comparatively few.

Adulteration was alleged in the first count of the information for the reason that the article of food consisted wholly of a filthy vegetable substance. Adulteration was alleged in the second count of the information for the reason that the article of food aforesaid consisted in part of a filthy vegetable substance. Adulteration was alleged in the third count of the information for the reason

that the article of food aforesaid consisted wholly of a decomposed vegetable substance. Adulteration was alleged in the fourth count of the information for the reason that the article of food aforesaid consisted in part of a decomposed vegetable substance. Adulteration was alleged in the fifth count of the information for the reason that the article of food aforesaid consisted wholly of a putrid vegetable substance. Adulteration was alleged in the sixth count of the information for the reason that the article of food aforesaid consisted in part of a putrid vegetable substance.

On February 24, 1914, the case having come on for trial before the court and a jury, and at the outset of the trial the sufficiency of the guaranty under which the goods were sold having been raised, the question was disposed of as shown by the following ruling by the court (Landis, *J.*):

Now, in the first place, all that Congress intended by the enactment of this law is to create a situation which as between the parties was a civil liability between the seller and the manufacturer. Congress intended that the man who is selling stuff to the trade, who has not the means of finding out the constituent elements of the things he is putting over his counter, which is in a solid package in nine cases out of ten, that that man, in order to make the pure-food law a reliable thing, was to be relieved in some way of finding out the elementary constituents of the thing he sold. Now, what is the way to do it? Not being a manufacturer himself, but being a middle man, why, of course, it readily appeared to Congress that the way to do this thing is to put the onus on the man who puts it up—the man that puts the bad thing up is the man that ought to be punished, anyway—in order to locate the responsibility where it belongs we will let the middle man out if he has got a good-faith guaranty. Now, Congress put it in the law, if he has a guaranty, to let him out. Now, ever since I have heard anything about guaranties, a guaranty may run until canceled. The banking business of Chicago is now being done on the theory that a guaranty given by Jones on the obligations of Brown is good against Jones's estate 20 years from now, if it is not recalled or canceled, anything done in the future between these powers falling within the liability incurred. Now, the idea that each time the retailer buys from the manufacturer a little dab of stuff that he is going to put out over his counter expressly undertakes with respect to that stuff to identify it in a guaranty, all of which, step by step, would have to be proved by legal evidence when your prosecution comes, the idea that Congress ever had that in mind is perfect nonsense, in my judgment.

Whereupon the trial proceeded, and after the submission of evidence and argument by counsel, the following charge was delivered to the jury by the court (Landis, *J.*):

Gentlemen of the jury, the charges in this case against the defendant originally were in six counts. I have taken out of the case all counts except the third and fourth. The third count charges that the substance in question—the article in question here—consisted wholly of a decomposed vegetable substance. The fourth count differs from the third count in this, that the fourth count charges that the article consisted in part of a decomposed vegetable substance.

The statutes provide that an article is to be considered as adulterated if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance.

Now, this is a criminal case, and we start out with the proposition that the defendant is presumed to be innocent of the charge. By that, as I have already had occasion to say, is meant that the making of this charge against the defendant, the bringing of the accusation, the arraignment of the defendant here on the charge, does not operate to cast any suspicion of guilt against the defendant, and that presumption of innocence continues to abide as a real substantial thing until a time comes in the case when a situation is created which destroys the assumption—a situation of a character that you no longer indulge the presumption. What is that situation? It is a situation where the guilt of the offense charged has been established beyond all reasonable doubt.

Now, by reasonable doubt is not meant a captious doubt, or the frame of mind that a man may find himself in in an endeavor to invent a way out for somebody accused of an offense. It is a real doubt; the frame of mind that a

juror is in, because of something in the proof, or something omitted from the proof, the presence or absence of which puts the juror in a frame of mind where, were he dealing with something of importance to himself personally, [it would] be very hard to act—he would pause and hesitate. If you are in that frame of mind, you have got a reasonable doubt, and your verdict should be "not guilty." On the contrary, if you have no such reasonable doubt—if the defendant's guilt of the offense charged in either counts third or fourth has been established by that degree of proof which I have indicated to you, your verdict should be "guilty."

Now, the term "decomposed," as used, means in a state of decomposition, rotten or decayed, and in this case the charge is against this defendant, which was not the jobber but the manufacturer, that the article was in that condition at the time the defendant turned the article over to Steele-Wedeles & Co., and the thing which the accusation sets out is that when the defendant did turn it over to Steele-Wedeles & Co. it was adulterated within the meaning of the adulteration as I have just given it to you.

Of course, if the evidence, if you find this article to be adulterated, or to have become adulterated, and the evidence fails to show that it was adulterated when the defendant turned it over to Steele-Wedeles & Co., the defendant is entitled to a verdict of "not guilty."

Now, in determining the question—if you find adulteration, that is, decomposition—in determining the question when it took place, consider the evidence of the witnesses here, the analysts, who have told you about their analysis, their microscopical examinations; bring to bear in your consideration of that evidence your common-sense judgment. You have heard from them what they found; you have heard from them an expression of their opinion and judgment as to what was meant, what was indicated by what they found, including evidence as to when the thing happened, as indicated by what they found; and so, if you believe on that evidence, within the requirements, as I have indicated them to you, that it has been shown here as a fact, assuming you find decomposition to have been found when the examinations were made, the bad condition existed when the defendant turned the product over to Steele-Wedeles & Co., the case is made out. As I say, bring to bear your common-sense judgment upon the evidence of these witnesses. You will recall what each said as to the extent to which in the product they found the molds and yeast cells, and what that indicated, what it meant.

Now, in this case, as I stated to you, the shipper is not on trial; the manufacturer is on trial. That is because of a provision in the law which is to the effect that the shipper, that is to say, the dealer, the man that sell things, that people who want to buy things may protect themselves against possible prosecution for violating a pure-food law by exacting from the manufacturer from whom he buys what he sells a guarantee that the product is not adulterated.

In this case there has been offered in evidence a guarantee, what the Government offers as a guarantee, what the defendant contests, alleging it is not a guarantee, but what the court charges you is a guarantee, holding, as I do, that it is a question of law for the court to determine whether the thing offered by the Government as a guarantee, in fact is. That document is in these words, to Steele-Wedeles & Co.:

"Gentlemen: Replying to your favor of the 10th inst., would say we hereafter guarantee that all goods we furnish you hereafter will comply with the Food and Drugs Act of June 30, 1906, with the understanding, however, that if we at any time use labels or packages furnished by you or gotten up as per your instructions we shall not be responsible for the form or wording of the same, but only guarantee the goods covering the same are not adulterated. It is expressly understood the above shall hold good until notice of revocation be given in writing. Truly, yours, Glaser, Kohn & Co. (Signed) G. D. Glaser, president."

I charge you that the legal effect of that document handed to the jobber by the defendant in this case, the manufacturer, was to guarantee the product in controversy in this case against being adulterated, and you have no—you have nothing to do with the question of whether or not there has been given a guarantee. The only question before you is whether or not, as charged in the information, at the time the defendant in this case turned the article over to Steele-Wedeles & Co. it was adulterated within the meaning of that term as I have given it to you.

Any exceptions, Mr. Lannen?

Mr. LANNEN. I desire to except to that part of the court's instruction instructing the jury that the guarantee in question is a legal guarantee on the grounds heretofore argued.

The COURT. Save your point. Any suggestions on behalf of the Government?

Mr. DICKINSON. None, except that your honor suggest to the jury that it is not necessary to find an intent here.

The COURT. I omitted to tell you gentlemen the question of intent or knowledge is not involved here. I should specifically have directed your attention to that point. It is not necessary to make out this case against this defendant, to show that the defendant intentionally put up an adulterated article, or that the defendant knew at the time it turned this article over to Steele-Wedeles & Co. that the article was adulterated in order to make out this case. The only question is whether at that time it was adulterated. The law casts upon the defendant the burden of showing that it was not adulterated. If you find that the article was adulterated wholly, the form of your verdict will be "We, the jury, find the defendant, Glaser, Kohn & Co., guilty as charged in the third count of the information." If you find against the defendant on the theory that the article was decomposed only in part, the form of your verdict will be "We, the jury, find the defendant, Glaser, Kohn & Co., guilty as charged in the fourth count of he informaion", writing in the word "third" or "fourth," whatever you find.

If you find for the defendant, the form of your verdict will be, "We, the jury, find the defendant not guilty."

I send the information with you to the jury room in order that you may refresh your memory as to which count contains the charge.

Mr. DICKINSON. The stipulation is to be offered.

The COURT. All right.

The jury thereupon retired, and after due deliberation returned into court with a verdict of guilty as to the fourth count of the information, and a verdict of not guilty as to the third count of the information, a verdict of not guilty upon the remaining four counts of the information having theretofore been directed by the court, and on April 28, 1914, a fine of $200, with costs, was imposed by the court. The defendant company thereafter filed its petition for a writ of error, and the same was pending on July 3, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

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Mott, G. H 3298
Schmeelk, H. W., Oyster Co 3304
Sea Food Co 3246
Serv-us Pure Food Co 3246
Sprague & Doughty 3295
Tooker-O'Brien Co 3246
Weser, C. H 3289
White, R. H 3285, 3286
Paste, tomato. *See* Tomato conserve.
Peaches:
Hamlin & Co 3145
canned:
Luddington, J., & Co 3155
Wenatchee Ice Cold Storage & Canning Co 3199
Peanut butter:
Royal Peanut Butter Co 3054
oil. *See* Oil.
Peanuts, shelled:
Baker, J. R., & Co 3080
Peas, canned:
Fretchling, E. L 3229
Jones, A 3106, 3113, 3156, 3216
Levin's, S. H., Sons 3106, 3113, 3156, 3216
Weisenburger, A. L 3229
Pennyroyal oil. *See* Oil.
Peppermint extract. *See* Extract.
Peppers, sweet:
Lehigh Sales Co 3153
Pepsin, wild cherry. *See* Tonic.
Phosphate, acid calcium. *See* Calcium.
Pills, diarrhea calomel: N. J. No.
Webster, W. A., Co 3049
neuralgic:
Webster, W. A., Co 3046
Pineapple, canned:
Howe, C. T., & Co 3123
Pearl City Fruit Co 3123
Pineapple extract. *See* Extract.
preserves. *See* Preserves.
Plum preserves. *See* Preserves.
Pork and beans with tomato sauce:
Thomas Canning Co 3381
Port wine. *See* Wine.
Preserves, apple:
Glaser, Kohn & Co 3400
blackberry:
Glaser, Kohn & Co 3400
blackberry and apple:
Schorndorfer & Eberhard Co 3278
cherry and apple:
Schorndorfer & Eberhard Co 3278
pineapple and apple:
Schorndorfer & Eberhard Co 3278
plum:
Castleman-Blakemore Co 3292
raspberry and apple:
Schorndorfer & Eberhard Co 3278
strawberry and apple:
Schorndorfer & Eberhard Co 3278
Prunes:
Welch, D. M., & Son 3022
Pulp, tomato. *See* Tomato pulp.
Quinin laxative tablets. *See* Tablets.
Radam's microbe killer. *See* Microbe killer.
Raspberry extract. *See* Extract.
jam. *See* Jam.
preserves. *See* Preserves.
Red thyme oil. *See* Oil.
Reisling wine. *See* Wine.
Rosemary oil. *See* Oil.
Russell's white drops. *See* Drops.
Russian cantharides. *See* Cantharides.
Rye flour. *See* Flour.
St. Johns bread:
—— ——— 3223
Salad dressing:
Schorndorfer & Eberhard Co 3294
Salmon. *See* Fish.
Salol tablets. *See* Tablets.
Sambuca cordial. *See* Cordial.
Sardines. *See* Fish.
Sauterne wine. *See* Wine.
Scuppernong wine. *See* Wine.
Sirup, cane:
Kroger Grocery & Baking Co 3137
Wilder, D. R., Mfg. Co 3096

Sirup, canned: N. J. No.
Fretchling, E. L 3222, 3229
Weisenburger, A. L 3222, 3229
sorghum:
Gordon, B. L., & Co 3339
National Mfg. Co 3339
sorghum compo:
Hubinger, J. C., Bros. Co 3317
Lehmann-Higginson Grocery Co 3317
tamarind:
Bernagozzi, W. P 3364
Smith's agricultural liniment. *See* Liniment.
Soda-water flavor, lemon:
De Lisser & Co 3047
Sodium salicylate tablets. *See* Tablets.
Solvent, Dr. Sullivan's sure:
Sullivan's, Dr., Sure Solvent Co 3130
Sorghum compo. *See* Sirup.
sirup. *See* Sirup.
Soup, canned:
Fretchling, E. L 3222
Weisenburger, A. L 3222
Specific No. 3, Dr. Hilton's:
Hilton, G. W 3043
Spring water. *See* Water.
Sprudel water. *See* Water.
Stramoline:
Stramoline Co 3124
Strawberry extract. *See* Extract.
flavor. *See* Extract.
jam. *See* Jam.
juice:
Dunn, E. H 3037
preserves. *See* Preserves.
Succotash, canned:
Fretchling, E. L 3229
Weisenburger, A. L 3229
Sugar butter:
Marshalltown Syrup & Sugar Co 3290
wafers. *See* Wafers.
Sullivan's, Dr., sure solvent. *See* Solvent.
Sweet birch oil. *See* Oil.
Sweet feed. *See* Feed.
Sweet oil. *See* Oil.
Tablets, acetanilid compound:
Burrough Bros. Mfg. Co 3003
acetanilid and sodium bromid compound:
Webster, W. A., Co 3019
anti-vomiting:
Webster, W. A., Co 3019
aspirin:
Webster, W. A., Co 3019
bismuth and calomel compound:
Webster, W. A., Co 3019
cold:
Webster, W. A., Co 3019
hypodermic, soluble:
Webster, W. A., Co 3051
morphin sulphate:
Webster, W. A., Co 3051
Tablets, quinin laxative: N. J. No.
Webster, W. A., Co 3019
salol:
Webster, W. A., Co 3019
sodium salicylate:
Webster, W. A., Co 3019
Tamarind sirup. *See* Sirup.
Thyme oil, red. *See* Oil.
Tincture, ferri chloridi:
McDonald, F. J 3392
Thompson Drug Co 3393
Wood, O. H 3394
iodin:
Pywell, R. T 3038
Sexton, Moses 3038
Tomato conserve:
American Conserve Co 3081, 3082, 3085, 3119, 3176, 3233
Coroneos Bros 3048, 3093
Ehrat, G., & Co 3176
Gross, Ignatius, Co 3081, 3083, 3085, 3119, 3233
Stone, C. D., & Co 3239
Vecchi, L 3385
ketchup:
—— —— 3362
Alart & McGuire 3009
American Pickle & Canning Co 3240
Coulter, H. B 3059
Crine, R. N., Seed Co 3324
Cruikshanks Bros. Co 3250
Fisher Packing Co 3367
Grant, Beall & Co 3059
Kuehne, Otto, Co 3082
Lewis Pkg. Co 3373
National Pickle & Canning Co 3196
Neal, W. H., & Son 3241
Pacific Vinegar & Pickle Works 3371
Schorndorfer & Eberhard 3282
Sunlit Fruit Co 3372
paste. *See* Tomato conserve.
pulp:
—— —— 3352
Andrews, W. P 3024, 3108, 3110, 3236, 3319
Austin Canning Co 3144, 3148
Boyle, John, Co 3149
Foote, D. E., & Co 3205, 3209
Frankfort Canning Co 3195
Gross, Ignatius, Co 3031
Hartlove Packing Co 3234
Jersey Packing Co 3152
Miller Bros. & Co 3365
Roberts Bros 3228, 3232, 3237
Spencer, W. M., Sons Co 3195
Stetson & Ellison Co 3118
Whiteland Canning Co 3354
purée:
—— —— 3362
Whiteland Canning Co 3354
sauce. *See* Pork & beans.
stock:
Greenabaum Bros. Co 3208

Tomatoes, canned: N. J. No.
Fretchling, E. L---- 3229
Weisenburger, A. L---- 3229
Tonic, gran liquore della stella:
Citro, G., & Co---- 3347
hop:
Darley Park Brewery---- 3070
malt:
Ebling Brewing Co---- 3375
Krug, Fred, Brewing Co-- 3107
Western Brewery Co---- 3001
malt extract:
Ballantine, P., & Sons---- 3374
medicinal beer:
Standard Brewery Co---- 3221
wild cherry pepsin:
Haller, S. P., Co---- 3231
Tonka and vanilla extract. *See* Extract.
Tsipouro pharos. *See* Cordial.
Turpentine, spirits of:
Consolidated Oil Co---- 3100
Southern States Turpentine Co---- 3100
Vanilla extract. *See* Extract.
Varnish, grain alcohol:
Weeks, O. J., & Co---- 3332
Vegetables, canned:
Fretchling, E. L---- 3222, 3229
Weisenburger, A. L---- 3222, 3229
Verdolino cordial. *See* Cordial.
Vermifuge, fernet milano:
Gargiulo, P., & Co---- 3039
Vinegar:
Barrett & Barrett---- 3018
Christy, H. C., Co---- 3177
Cleveland, W. D., & Sons-- 3028
Dawson Bros. Mfg. Co.- 3099, 3166
Haarmann Vinegar & Pickle Co---- 3297, 3309
Harbauer Co---- 3091
Hughes, R. M., & Co---- 3030
Johnson-Berger & Co---- 3103
Jones Bros. & Co---- 3065
Kansas City Preserving Co- 3360
Knadler & Lucas---- 3028
Latimer Cider & Vinegar Co---- 3184
Leroux Cider & Vinegar Co---- 3067, 3272
Levison Preserving Co---- 3360
Miller Bros. Grocery Co--- 3122
Monarch Vinegar Works--- 3315
Ohio Cider Vinegar Co---- 3187, 3192, 3383
Old Kentucky Cider Vinegar Works---- 3089
Southern Fruit Products Co---- 3065
Union Vinegar Co---- 3342
Vinegar—Continued. N. J. No.
Youngstown Cider and Vinegar Co---- 3122
Vodka. *See* Brandy.
Wafers, sugar:
Excelsior Wafer Co---- 3321
Leonard Products Co---- 3321
Woolworth, F. W., Co---- 3321
Walnuts. *See* Nuts.
Water, magnesia spring:
Salvator Mineral Springs Co---- 3389
sprudel:
West Baden Springs Co--- 3136
Wheat:
Frisch, J. M., & Co---- 3068
bran. *See* Feed.
Wild cherry compound. *See* Extract.
pepsin tonic. *See* Tonic.
Wine:
Two Brothers Wine & Liquor Co---- 3193, 3206
catawba:
Sweet Valley Wine Co---- 3271
champagne:
Green, J. L---- 3109
Nectar Co---- 3158, 3163
Shufeldt, H. H---- 3109
claret:
Carresi, G---- 3128
Giacona, C., & Co---- 3128
Deidesheimer:
Sweet Valley Wine Co---- 3271
Hochheimer:
Sweet Valley Wine Co---- 3271
Laubenheimer:
Sweet Valley Wine Co---- 3271
muscatel:
Textor, A., & Co---- 3168
Niersteiner:
Sweet Valley Wine Co---- 3271
port:
Kelley's Island Wine Co--- 3129
Riesling:
Sweet Valley Wine Co---- 3271
sauterne:
Schmidt, jr., A., & Bros. Wine Co---- 3346
scuppernong:
——— ———---- 3035
Bay View Wine Co---- 3299
Schmidt, jr., A., & Bros. Wine Co- 3159, 3162, 3303, 3346
Sweet Valley Wine Co- 3101, 3140, 3160, 3161, 3164, 3165, 3271, 3291
Textor, A., & Co---- 3171
Vine coca leaves:
Webster, W. A., Co---- 3019
Wine of Chenstohow. *See* Bitters.
Wintergreen oil. *See* Oil.

## NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

**3401. Adulteration and misbranding of honey. U. S. v. 12 Cans of a Food Product Labeled Honey. Decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 3323. I. S. No. 2028-d. S. No. 1217.)

On December 21, 1911, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 cases, each containing 2 60-pound cans, and 2 cases, each containing 4 36-pound cans of honey, remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been transported from the State of New York into the State of Pennsylvania, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Excelsior Choice Pure Strained Honey. Guaranteed under the National Pure Food and Drugs Act, June 30, 1906, under Serial No. 14914. Excelsior Honey Company, N. Y."

Adulteration of the product was alleged in the libel for the reason that a certain article, to wit, invert sugar, had been substituted in whole or in part for pure honey in said article of food. Misbranding was alleged for the reason that the labels upon the cans of the article of food, labeled honey, bore a statement regarding such article and the ingredients and substances contained therein which was false and misleading in manner following, to wit: In that said labels upon each of the said several cans bore the statement set forth above and said labels and the statements and inscriptions thereon contained were calculated and adapted to convey the impression and belief that said article of food, labeled honey, was pure honey, whereas, in truth and in fact, the said article of food, labeled honey, was not pure honey, but was a mixture of honey and invert sugar.

On May 13, 1914, the case having come on for hearing and no answer having been filed to the libel, although Max Cohen and William I. Cohen, trading as the Excelsior Honey Co., had appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be sold by the United States marshal and that the costs of the proceedings should be paid by said claimants.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3402. Adulteration and misbranding of honey. U. S. v. 8 Cases * * * Strained Honey. Decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 3475. I. S. No. 13972-d. S. No. 1290.)

On February 27, 1912, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 8 cases, 4 of which contained 16 36-pound cans, and 4 of which contained 2 60-pound cans of honey, remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been shipped on or about February 19, 1912, and transported from the State of New York into the State of Pennsylvania, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the libel for the reason that a certain article, to wit, invert sugar, had been substituted in whole or in part for pure honey in the said article of food. Misbranding was alleged for the reason that the label upon each of the cans of the article of food bore a statement regarding such article and the ingredients and substances contained therein which was false and misleading in that said label upon each of said cans bore the following statement: "Excelsior Choice Pure Strained Honey. Guaranteed under the National Pure Food & Drugs Act, June 30th, 1906, under Serial No. 14914 by Excelsior Honey Co., N. Y.", which statement was calculated and adapted to convey the impression and belief that said article of food was pure honey, whereas, in truth and in fact, said article was not pure honey, but was a mixture of honey and invert sugar.

On May 13, 1914, the case having come on for hearing, and Max Cohen and William I. Cohen, trading as the Excelsior Honey Co., having appeared for the property, but never having filed an answer, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be sold by the United States marshal and that the costs of the proceedings should be paid by said claimants.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3403. Adulteration and misbranding of honey. U. S. v. 3 Cases * * * Strained Honey. Decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 3476. I. S. No. 13972–d. S. No. 1290.)

On February 28, 1912, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 3 cases, one of which contained 4 36-pound cans, another of which contained 2 60-pound cans, and another of which contained 9 15-pound cans of honey, remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been shipped on or about February 20, 1912, and transported from the State of New York into the State of Pennsylvania, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the libel for the reason that a certain article, to wit, invert sugar, had been substituted in whole or in part for pure honey in the said article of food. Misbranding was alleged for the reason that the label upon each of the cans containing the article of food bore a statement regarding such article and the ingredients and substances contained therein which was false and misleading in that said label upon each of said cans bore the following statement: "Excelsior Choice Pure Strained Honey. Guaranteed under the National Pure Food & Drugs Act, June 30th, 1906, under Serial No. 14914 by Excelsior Honey Co., N. Y.", which statement was calculated and adapted to convey the impression and belief that said article of food was pure honey, whereas, in truth and in fact, said article was not pure honey but was a mixture of honey and invert sugar.

On May 13, 1914, the case having come on for hearing, and Max Cohen and William I. Cohen, trading as the Excelsior Honey Co., having appeared for the property but never having filed an answer, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal and that the costs of the proceedings should be paid by said claimants.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3404. Adulteration and misbranding of honey. U. S. v. 2 Cases * * * Strained Honey. Decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 3477. I. S. No. 13972–d. S. No. 1290.)

On February 28, 1912, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 cases, each containing 9 15-pound cans of honey, remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been shipped on or about February 23, 1912, and transported from the State of New York into the State of Pennsylvania, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the libel for the reason that a certain article, to wit, invert sugar, had been substituted in whole or in part for pure honey in the said article of food. Misbranding was alleged for the reason that the label upon each of the cans containing the article of food bore a statement regarding such article and the ingredients and substances therein which was false and misleading, in that said label upon each of said cans bore the following statement: "Excelsior Choice Pure Strained Honey. Guaranteed under the National Pure Food & Drugs Act, June 30th, 1906, under Serial No. 14914 by Excelsior Honey Co., N. Y.", which statement was calculated and adapted to convey the impression and belief that said article of food was pure honey, whereas, in truth and in fact, said article was not pure honey but was a mixture of honey and invert sugar.

On May 13, 1914, the case having come on for hearing, and Max Cohen and William I. Cohen, trading as the Excelsior Honey Co., having appeared for the property but never having filed an answer, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal and that the costs of the proceedings should be paid by said claimants.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3405. Adulteration and misbranding of nitroglycerin tablets. U. S. v. Chicago Pharmacal Co. Plea of guilty. Fine, $100 and costs.** (F. & D. No. 3484. I. S. No. 11245–d.)

On April 26, 1913, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Chicago Pharmacal Co., a corporation, Chicago, Ill., alleging shipment by said company in violation of the Food and Drugs Act, on July 27, 1911, from the State of Illinois into the State of Michigan, of a quantity of nitroglycerin tablets which were adulterated and misbranded. Analysis of a sample of the product by the Bureau of Chemistry of this department showed the presence of 0.009 grain nitroglycerin per tablet.

Adulteration of the product was alleged in the information for the reason that the label borne on the bottle containing the drug product aforesaid represented to the purchaser that each of the nitroglycerin tablets shipped in the bottle aforesaid contained 1/50 of a grain of nitroglycerin, whereas, in truth and in fact, the strength of each of the nitroglycerin tablets packed in the bottle aforesaid fell below the professed standard under which the drug product aforesaid had been sold and shipped, in that each of the nitroglycerin tablets contained not to exceed, to wit, 0.009 of a grain of nitroglycerin. It was alleged in the information that the product was misbranded in that the bottle containing it bore a label in words and figures as follows, to wit: "1000 Tablets 1154 Nitroglycerin 1/50 gr. Chicago Pharmacal Company, Pharmaceutical Chemists,

Chicago.", which said statement on the label appearing on the bottle was false and misleading, in that said statement represented to the purchaser that each of the nitroglycerin tablets contained 1/50 of a grain of nitroglycerin, whereas, in truth and in fact, the strength of each of the nitroglycerin tablets packed in the bottle aforesaid fell below the professed standard under which the drug product aforesaid had been sold and shipped, in that each of the nitroglycerin tablets contained not to exceed 0.009 of a grain of nitroglycerin. Misbranding was alleged for the further reason that said statement on the label misled and deceived the purchaser into the belief that each of the nitroglycerin tablets contained 1/50 of a grain of nitroglycerin, whereas, in truth and in fact, the strength of each of the nitroglycerin tablets fell below the professed standard under which the product had been sold and shipped as aforesaid, in that each of the nitroglycerin tablets contained not to exceed, to wit, 0.009 of a grain of nitroglycerin.

On February 13, 1914, the defendant company withdrew its plea of not guilty formerly entered and entered its plea of guilty, and the court took the case under advisement. On June 5, 1914, the case having come on for final disposition, the court imposed a fine of $100 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3406. Adulteration and misbranding of honey. U. S. v. 6 Cases of Honey. Tried to the court and a jury. Verdict for the United States. Decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 3495. S. No. 1299.)

On March 1, 1912, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 6 cases, 3 of which contained 4 36-pound cans and 3 of which contained 4 [2] 60-pound cans, of honey, remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been shipped on or about February 27, 1912, and transported from the State of New York into the State of Pennsylvania, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the libel for the reason that a certain article, to wit, invert sugar, had been substituted in whole or in part for pure honey in the said article of food. Misbranding was alleged for the reason that the label upon each of the cans containing the article of food bore a statement regarding it and the ingredients and substances contained therein which was false and misleading, in that said label bore the following statement: "Excelsior Choice Pure Strained Honey. Guaranteed under the National Pure Food & Drugs Act, June 30th, 1906, under Serial No. 14914 by Excelsior Honey Co., N. Y.," which said statement, contained on said label, was calculated and adapted to convey the impression and belief that said article of food was pure honey, whereas, in truth and in fact, said article of food was not pure honey, but was a mixture of honey and invert sugar.

On January 9, 1913, Max Cohen and William I. Cohen, trading as the Excelsior Honey Co., New York, N. Y., filed their answer denying the material allegations in the libel. On November 20, 1913, the case came on for a hearing before the court and a jury, and on November 25, 1913, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Holland, *J.*):

Gentlemen of the jury, the United States Government, through its officer, seized 6 packages or cases containing 18 cans of food product labeled "Excelsior Choice Pure Strained Honey," and it is claimed that it is put up in packages

and labeled in violation of the pure-food act of June 30, 1906. Every man, woman, and child in the United States when hungry needs food and when sick needs drugs, but the individual citizen is unable to see to it that the food purchased or the drugs he must purchase are pure, and the Government has taken on itself the work of performing that for the whole people. So that this is a contest for pure food, for the protection of the individual citizen who has not the facilities or the information to protect himself, and it is a very beneficial and commendatory act, because we all know that impure foods are manufactured and sold, and it is against the manufacturer and vendor of these impure foods and the manufacturer and vendor of these impure drugs that this act is aimed, and it has no terrors for the man who manufactures or sells a pure article and brands it what it is. Notwithstanding the attempt to throw a very great deal of doubt and uncertainty over the work of the experts in this case, chemistry has been brought to such a high point of efficiency that it can be told with certainty, or, at any rate, with that degree of certainty which should authorize us to act, what is contained in almost any substance you put into the possession of the expert chemist. They can tell whether or not honey is pure or whether it has some substance mixed in it, and it may be that they can not tell it with the same degree of certainty that you can work a geometrical demonstration, but they can say, with a degree of certainty that should authorize us to act, in the examination of questions which come before courts, as to whether foods or drugs of a specific kind are pure or adulterated or misbranded.

Now, gentlemen of the jury, this act of Congress, to which I have alluded, says that it shall be unlawful for any person to manufacture any article of food or drug which is adulterated or misbranded within the meaning of this act, and then another section reads that for the purposes of this act an article shall be deemed to be adulterated if any substance has been substituted, wholly or in part, for the article. That is the statutory definition of adulteration, that the term "misbrand" shall apply to all labels which shall bear any statement, design, or device regarding such article or the ingredients or substance contained therein which shall be false or misleading in any particular, and, further, that any article of food that is adulterated or misbranded within the meaning of this act shall be liable to be proceeded against in any district court of the United States, within the district where the same is found and seized for confiscation, by a process of libel for condemnation, and that is what is done here.

Now, you will notice, gentlemen of the jury, that an article is adulterated if any substance has been substituted wholly or in part for the article. It is not the dictionary definition of adulteration. You must take the statutory definition. It makes no difference what the article is; if any substance has been substituted wholly or in part it is an adulteration. There is no question as to whether it is deleterious or injurious to health; it may or may not be; the substitution may be as beneficial or more beneficial than the original article. What the law aims at is to guarantee to the consumer that when he desires to purchase a certain article, and goes to a manufacturer or vendor for that article and states what he wants, that he shall know that he gets what he pays for. That is the object of the law. It is to protect the consumer against adulteration and misbranding of their food and their drugs, so that they may be able to rely on what an article is said to contain, and they may rely that they will not be misled by the label.

The Government in its examination or supervision of matters of this kind concluded that this particular brand of honey which is labeled "Excelsior Choice Pure Strained Honey" is not a pure honey, and they seized these six cases, and they now bring this proceeding, charging that it is an impure or adulterated honey, in one of the counts of their libel and in the other that it is misbranded in that the label on it, "Excelsior Choice Pure Strained Honey," is not true; that it contains other matters besides pure honey, and therefore it is misbranded, and they call their experts to prove what they allege in this libel.

Now, we are entirely dependent upon the testimony of experts, with the sole exception of the defendant himself, who denies that he placed anything but Cuban and buckwheat honey in this mixture and boiled it. The Government experts come forth and they testify and give an account of the analysis which they made for the purpose of ascertaining what this mixture contained. They state positively that they made these examinations and they give the result. They start with what they regard the most significant analysis, which is the one that produced the ash result, and they go through the entire list of known methods in chemistry by which you can ascertain whether honey is pure or adulterated or mixed with some other substance. They take the Fiehe and the

Browne test, the tannin precipitate, the protein, the dextrose, and the levulose, polarization, and finally the tartaric. There are nine tests, and also Mr. Hilts said he looked through the microscope for pollen, and found the pollen, although it was in a scanty amount, which, of course, showed that there was some honey in it.

Now, they say, too, that the ash test revealed the fact that this mixture only showed ash to the amount of 0.028, and the Cuban honey has 0.07 ash, and that buckwheat honey has 0.07. They both have the same amount of ash; and then they reason that if there had been a mixture of buckwheat and Cuban honey, as claimed, that the ash should have been 0.07; but that it was only 0.028, which is only 40 per cent of the ash which would have been contained in it if this mixture had been made up of Cuban and buckwheat honey, as claimed. And the Government experts say that what was done, in their judgment, was that about 40 per cent of that mixture was either Cuban or buckwheat honey, with an ash of 0.07 per cent, and the balance, or 60 per cent, was a substance that had no ash. They do not just say that; but, at any rate, it was made up of a substance that reduced the ash to 0.028. Now, if there be no ash in commercial invert sugar, mark you, and you put 60 per cent of that mixture with 40 per cent of a honey containing 0.07 of ash, and mix them up together, and analyze it, you will produce a result which is produced here, to wit, ash 0.028, and the Government experts tell us they reasoned at once that there was some mixture of invert sugar.

Then they took up the Fiehe test, and they say they found—I will not go through the details of that—they found that there was an indication of invert sugar or adulteration of the mixture. Then they took up the Browne test, and they say that indicated the same thing. They corroborated the ash test and all the other tests, the precipitate test and the protein test, the tannin test (they all corroborated each other); and the dextrose test, the levulose test, and the polariscopic test; and then the tartaric test (they all corroborate each other—even the tartaric test). That was the last test that was made. You will recall that that is the only acid that the evidence shows is used in converting commercial sugar into a substance to be used for a mixture with honey, and they found tartaric acid in this mixture to the amount of 0.08. Now, the defendant himself says that he mixes in his other articles of sale tartaric acid to an amount only two points higher; that is, 0.1, or one-tenth, and this is 8 one-hundredths. So that the Government claims in its examination of this article it has availed itself of all the known processes in chemistry to ascertain exactly what is in this article of food and that every one points, in their judgment, unmistakably, to the one conclusion; and that is that it was a mixture of honey and invert sugar, or another substance than honey, in the proportions of 40 to 60. That is the evidence on the side of the Government, and you will recall with what intelligence or lack of intelligence, satisfaction or lack of satisfaction to you they maintained their position as to the work they had done, and you will judge, of course, of the intelligence with which it was done. and judge whether or not you will accept their conclusions or the conclusions reached by the expert of the defendant. I might say also here, before I go to the defendant's side of the case, that the defendant claims the tartaric-acid test that was testified to was not mentioned until after the case had been closed. practically, and he had no chance to reply to it. That is true; but if it should turn out that he is injured by it, even now if his experts should discover it or if it should be discovered hereafter, if it is taken in time, that there is no tartaric acid there he certainly will be entitled to protection, and, of course, he urges that that fact should be taken into consideration in his favor. So it should be. But, you will say, while you may take that into consideration. whether or not Mr. Hilts would or would not be prejudiced one way or the other in stating the exact truth in this matter as to any of the tests.

Now, as I have said, which will you take, the expert of the defendant or the experts of the Government? The defendant is called, and he tells you that this mixture is made up of Cuban and buckwheat honey, and he told us how he boiled and strained it, and that it was Koschered for the purpose of selling to the Jewish trade, and it was boiled, and he told you when he was on the stand that the Koschering was the straining. When recalled, after the expert testified, he came back and he told you that the skimming was the Koschering, that the whole process was the Koschering; at any rate, he boils this article that is here in question, and whether it was for the purpose of Koschering it or not is not very clear in his statement, because honey is cleaned by straining it, and it is heated to a certain point, but he says he boils and skims the top off

and then strains it, and then he calls it Koschered honey, and he says that he never mixes anything but Cuban and buckwheat honey together in making it. The expert comes upon the stand, Mr. Deghuee, and he tells you just exactly what he did in the examination of this mixture. He had a big quantity of it, and he made a thorough examination, and he says that it was done under, I believe, the polariscopic test. The defendant's expert went through a number of these tests. He tells us he went through the ash test and what he found. He said that the low ash was not conclusive as to whether or not this honey was pure or adulterated, but it was suspicious and suggested a further investigation. He also said that buckwheat honey contained 0.07 and Cuban honey 0.07, and then he made the Browne test, and he found from that test that there was a suspicion and that he should go farther, and in all his tests he found that there was a suspicion and that he should go farther, with the exception of the polariscopic test. The general result of that, he claims, was to lead him to the conclusion that there was no adulteration. He found furfural; he found a red color, which he said lasted more than an hour, but after all, and after thorough deliberation, he said that the general result of the polariscopic test, which he made, led him to believe that there was no adulteration. If there was no adulteration, there was no misbranding, of course. If there was adulteration, there is misbranding. Of course, as I have told you, gentlemen of the jury, you must say which conclusions you will adopt, those produced and testified to by the Government or those produced and testified to by the defendant. There is one other matter that is urged strongly upon you, and that is that it would have been a losing matter with the defendant if he had used sugar instead of honey. The defendant's counsel contends that he would have lost money if he had mixed sugar and honey together, and that it paid him, it was a matter of profit to him to mix the honeys which he claimed he mixed. You can make the calculation yourselves. The honeys which he claimed he mixed were Cuban and buckwheat. He says he mixed 20 per cent of buckwheat at 7½ cents. At 7½ cents, 20 pounds of buckwheat would be $1.50. Eighty pounds of Cuban honey at 4½ cents would be $3.60. One hundred pounds of that mixture would be $5.10. Now, if you substitute sugar and water for that mixture, at the rate of 6½ cents for sugar and nothing for the water, and that mixture is mixed together at the proportion of 3 to 7, you will find 100 pounds of that stuff, of that mixture, will cost $4.55. So that 100 pounds of the sugar and water mixture would cost $4.55, and 100 pounds of the buckwheat and Cuban mixture would cost $5.10. Now, you can very readily say whether it would be profitable or unprofitable to substitute stuff costing $4.55 for stuff costing $5.10, if that calculation is correct. But you can make it. It is a very material matter as to whether it was profitable or unprofitable. We can not see any motive for this defendant adulterating with a more expensive article when it is going to injure him, but there would be some reason for him adulterating with a less expensive article, and especially so if there are other reasons for the combination and the mixture. But that has only a significance as to whether or not a man had a motive. That goes to the motive. It is not any proof as to whether he did or did not adulterate. It simply goes to the motive.

The evidence upon which you will have to rely to ascertain whether it was pure or adulterated, and if adulterated, misbranded, is the evidence adduced upon the stand by the experts for the Government, and by the experts and the defendant for the defendant.

Gentlemen of the jury, you will now retire. I will be here until 6 o'clock. If you come to an agreement by that time I will receive the verdict.

Mr. PRICHARD. I except to that part of the charge which relates to the comparison of the cost of sugar and water with the comparison of the cost of the mixed honeys, because there is absolutely no evidence or charge by the Government that sugar and water could be sold or was sold by the defendant. The charge was that the invert sugar was added to the honey, and the evidence was that it could only be added to buckwheat honey, 20 per cent, as a substitute for Cuban honey. So that the comparison should have been between $4.50, which he paid for the Cuban honey, and $5.10, which the sugar and water would have cost him if he had added it.

The COURT. I do not recollect any evidence to the effect that it would not have been entirely feasible to substitute the water and sugar converted into invert sugar by the addition of one-tenth of 1 per cent of tartaric acid to a mixture of 20 per cent of buckwheat honey and 80 per cent of Cuban honey. I know of no evidence, I say, which would indicate that that substitution for one could not have been made for the other. He could have made that mixture, then

substituted as much per cent of the other mixture as he saw fit, so far as the evidence goes.

Mr. PRICHARD. Your honor will give me an exception to that?

The COURT. Yes; you may have an exception.

(Exception noted for defendant, as requested, by direction of the court.)

Mr. PRICHARD. I also except to the charge where the court said that it is possible for expert testimony to determine with certainty that invert sugar was added to this substance.

(Exception noted for defendant, as requested, by order of the court.)

Mr. PRICHARD. I also except to the charge of the court where the court said that they might find that this was adulterated, if any substance was added, without confining the jury to the one substance which was specified in the statement.

(Exception noted for defendant, as requested, by direction of the court.)

Mr. PRICHARD. I also except to as much of the charge as says that the question turns entirely upon the testimony of experts without emphasizing or alluding to and giving importance to the testimony of the defendant himself and of the witnesses whom he called to corroborate him.

(Exception noted for defendant, as requested, by direction of the court.)

Mr. PRICHARD. I also except to so much of the charge that the Government experts testified that every test corroborated their opinion.

(Exception noted for defendant, as requested, by direction of the court.)

Mr. PRICHARD. I also except to the charge generally on the ground that it dwelt unduly upon the arguments for the Government without giving equal prominence to the arguments for the defendant.

(Exception noted for defendant, as requested, by direction of the court.)

Mr. PRICHARD. I also except to the charge where the court said that the evidence was that the only acid used in the preparation of commercial invert sugar was tartaric acid.

(Exception noted for defendant, as requested, by direction of the court.)

Mr. PRICHARD. I also except to that part of the charge of the court which says that this is a contest for pure food, for the protection of the individual citizen.

(Exception noted for defendant, as requested, by direction of the court.)

Mr. PRICHARD. I also except to that part of the charge of the court which says that if the defendant is injured by the testimony as to the tartaric-acid test being introduced, when defendant had no chance to reply to it, he will be entitled to protection.

(Exception noted for defendant, as requested, by direction of the court.)

Mr. PRICHARD. I also except to that part of the charge of the court which says that the defendant testified that Koschering was the straining, but when recalled testified that the whole process was the Koschering, and whether the boiling was for the purpose of Koschering, is not very clear.

(Exception noted for defendant, as requested, by direction of the court.)

Mr. PRICHARD. I also except to that part of the charge of the court which says that Dr. Deghuee testified that in all his tests he found a suspicion, with the exception of the polariscopic test, and that Cuban and buckwheat honey contained 0.07 ash.

(Exception noted for defendant, as requested, by direction of the court.)

The COURT. Gentlemen of the jury, you may now retire.

The jury thereupon retired and, after due deliberation, returned into court with a verdict in favor of the United States, and, on May 13, 1914, final judgment of condemnation and forfeiture was entered, the court finding the product adulterated and misbranded, and it was ordered that that product should be sold by the United States marshal and that Max Cohen and William I. Cohen, trading as the Excelsior Honey Co., owners and claimants, should pay all costs of the proceedings.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3407. Misbranding of Mexican hair tonic and nit killer. U. S. v. Leo A. Hogg (Mexican Roach Food Co.). Plea of guilty. Fine, $10.** (F. & D. 3496. I. S. No. 15649–c.)

On November 12, 1912, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against

Leo A. Hogg, doing business under the name of the Mexican Roach Food Co., Buffalo, N. Y., alleging shipment by said defendant in violation of the Food and Drugs Act, on October 7, 1910, from the State of New York into the State of Pennsylvania, of a quantity of so-called "Mexican Hair Tonic and Nit Killer," which was misbranded. The product was labeled: (On carton) "Mexican Hair Tonic and Nit Killer Contains 4% Alcohol Kills Nits and Parasites in the Hair. Price 15 cents Manufactured by Mexican Roach Food Co. Buffalo, N. Y. Guaranteed under the Food and Drugs Act June 30, 1906 No. 5336 Kills nits and parasites in the hair Perfectly Harmless. Is a Purely Vegetable Preparation. Directions For nits and parasites. Rub well all over head at night, comb out in the morning and the head will be clean of vermin. As a Tonic. Rub well into the scalp night and morning. Do not wash off, as it cleans the scalp if well rubbed in. None genuine without this seal. (Picture of mother examining head of child). For Falling Hair and Dandruff. It is also the Best Hair Tonic, will keep hair from falling and keep the scalp free from dandruff." (On the bottle) "Mexican Hair Tonic and Nit Killer Contains 4 per cent Alcohol One Application applied to the hair and well rubbed into scalp will kill all Nits and Parasites in the hair. This preparation is non-poisonous and perfectly harmless; can be used on heads of infants with perfect safety. It is also an elegant Hair Tonic and Scalp Cleaner. Price, 15 cents Manufactured by Mexican Roach Food Co., Buffalo, N. Y. Guaranteed under the Pure Food and Drugs Act, June 30th, 1906. No. 5336."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that it consisted of soap, borax, delphinine, alcohol (3.5 per cent), and water.

Misbranding of the product was alleged in the information for the reason that it bore the labels in the words and figures as aforesaid, which said labels were false and misleading in that the word "Mexican" thereon purported that said product was of Mexican origin and manufacture, whereas the same was manufactured in and was a product of the United States, and said statement, "Perfectly Harmless," was false and misleading, because, as a matter of fact, said product contained delphinine, which is a poisonous and harmful ingredient. Misbranding was alleged for the further reason that the statement on the product, "Can be used on heads of infants with perfect safety," was false and misleading, because, as a matter of fact, said product contained the said delphinine, which is an injurious and unsafe drug product, and for the further reason that said statement, "A purely vegetable preparation," was false, the said product containing borax, which is a mineral product and not vegetable; and for the further reason that the statement, "Contains 4 per cent alcohol," was not displayed in type sufficiently large to attract the attention of the purchaser, as required by the regulations then in force, as provided by law. It was further alleged that, by reason of the premises and within the meaning of the Food and Drugs Act, the said statements on said labels were false and misleading and constituted a misbranding of the drug product contained in the bottles and cartons.

On May 12, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

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**3408. Adulteration and misbranding of so-called cider vinegar. U. S. v. J. Levinsohn (Purity Grocers Sundries Co.). Plea of guilty. Fine, $100 and costs.** (F. & D. No. 3500. I. S. No. 11263-d.)

On August 4, 1913, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against J. Levinsohn, doing business as the Purity Grocers Sundries Co., Chicago, Ill., alleging the shipment by said defendant in violation of the Food and Drugs Act, on July 14, 1911, from the State of Illinois into the State of Indiana, of a quantity of so-called cider vinegar, which was adulterated and misbranded.

An analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Glycerin (grams per 100 cc) | 0.036 |
| Solids (grams per 100 cc) | 0.55 |
| Nonsugar solids (grams per 100 cc) | 0.425 |
| Reducing sugar as invert (grams per 100 cc) | 0.125 |
| Sugar in solids (per cent) | 22.7 |
| Polarization, direct, at 20° C. (°V.) | 0.6 |
| Polarization, invert, at 20° C. (°V.) | 0.0 |
| Ash (grams per 100 cc) | 0.12 |
| Alkalinity soluble ash (cc N/10 acid per 100 cc) | 5.2 |
| Soluble phosphoric acid: Trace. | |
| Insoluble phosphoric acid (mg per 100 cc) | 3.64 |
| Acid, as acetic (grams per 100 cc) | 4.18 |
| Volatile acid, as acetic (grams per 100 cc) | 4.16 |
| Fixed acid, as malic (grams per 100 cc) | 0.02 |
| Lead precipitate: Light. | |
| Color (degrees, brewer's scale, 0.5 in.) | 10 |
| Color removed by fuller's earth (per cent) | 62.5 |
| Alcohol precipitate (grams per 100 cc) | 0.061 |

An imitation, containing very little if any cider vinegar.

Adulteration of the product was alleged in the information for the reason that a liquid preparation, to wit, a dilute solution of acetic acid, commonly known as distilled vinegar, had been mixed and packed with the article of food aforesaid, so as to reduce and lower and injuriously affect the quality and strength of the article of food aforesaid, and for the further reason that a liquid preparation, to wit, a dilute solution of acetic acid, commonly known as distilled vinegar, had been substituted wholly for the article of food aforesaid, and for the further reason that a liquid preparation, to wit, a dilute solution of acetic acid, commonly known as distilled vinegar, had been substituted in part for the article of food aforesaid, and for the further reason that the article of food aforesaid was colored in a manner whereby inferiority was concealed. Misbranding of the product was alleged for the reason that the bottles packed in the barrels containing the article of food bore a label in words and figures as follows, to wit: "Purity Brand Cider Vinegar, 4% Acetic Acid. Put up by Purity Grocers Sundries Co., Chicago", which said statement on the label, appearing on each of the bottles, was false and misleading in that said statement represented to the purchaser that the article of food was a genuine cider vinegar, conforming to the commercial standard for said article of food, whereas, in truth and in fact, each of the bottles packed in the barrels did not contain genuine cider vinegar, but contained a dilute solution of acetic acid, commonly known as distilled vinegar, which had been mixed and packed with the articles of food aforesaid, so as to reduce and lower and injuriously affect the quality and strength of the article of food aforesaid. Misbranding was

alleged for the further reason that said statement on the label, appearing on each of the bottles, deceived and misled the purchaser into the belief that the article of food was a genuine cider vinegar, conforming to the commercial standard for said article of food, whereas, in truth and in fact, the bottles did not contain genuine cider vinegar, but contained a dilute solution of acetic acid, commonly known as distilled vinegar, which had been mixed and packed with the article of food aforesaid, so as to reduce and lower and injuriously affect the quality and strength of the article of food aforesaid.

On December 15, 1913, the defendant entered a plea of guilty to the information and on January 19, 1914, the defendant was fined $200 and costs. On June 5, 1914, the defendant's motion to reduce the fine was heard and the fine was reduced to a fine of $100, with costs.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

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U. S. DEPARTMENT OF AGRICULTURE,
BUREAU OF CHEMISTRY.
C. L. ALSBERG, CHIEF OF BUREAU.

# SERVICE AND REGULATORY ANNOUNCEMENTS.[1]

AUGUST, 1914.

## SUPPLEMENT.[2]

N. J. 3409–3449.

## NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

**3409. Adulteration of eggs in the shell. U. S. v. S. J. Hurst, jr. Plea of guilty. Fine, $25 and costs.** (F. & D. No. 3790. I. S. No. 3806–d.)

At a stated term of the District Court of the United States for the Western District of Missouri, the grand jurors of the United States within and for said district, acting upon a report by the Secretary of Agriculture, returned an indictment against S. J. Hurst, jr., Kansas City, Mo., charging the shipment by said defendant in violation of the Food and Drugs Act, on or about August 28, 1911, from the State of Missouri into the State of Illinois, of a quantity of eggs in the shell which were adulterated.

Examination of samples of the product by the Bureau of Chemistry of this department showed the following results:

| | Number of eggs. | Per cent. |
|---|---|---|
| Black rot | 5 | 6.9 |
| White rot | 25 | 34.7 |
| Stale, weak yolk | 6 | 8.4 |
| Stale, weak yolk, blood ring | 1 | 1.4 |
| Stale, black spot, weak yolk | 2 | 2.7 |
| Stale only | 1 | 1.4 |
| Black spot, weak yolk | 2 | 2.7 |
| Blood ring, weak yolk | 1 | 1.4 |
| Blood ring only | 1 | 1.4 |
| Weak yolk only | 12 | 16.7 |
| Yolk discolored | 1 | 1.4 |
| Fair or good | 14 | 19.5 |
| Egg broken | 1 | 1.4 |
| | 72 | 100.0 |

Adulteration was charged in the indictment for the reason that the eggs consisted in part of a filthy, decomposed, and [or] putrid animal substance, said eggs containing spots of rot, spots of mold and embryos, and which said eggs were unfit for food.

On April 22, 1914, the defendant entered a plea of guilty to the indictment, and the court imposed a fine of $25 and costs.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

[1] In conformity with a uniform plan for the issuance of information, instructions, and notices of a regulatory nature by various branches of the department, as prescribed by the Acting Secretary of Agriculture in memorandum No. 57, dated December 26, 1913, this publication will be issued monthly by the Bureau of Chemistry. It covers approximately the month for which it is dated, and each month's issue is expected to appear during the succeeding month. Free distribution will be limited to firms, establishments, and journals especially concerned. Others desiring copies may obtain them from the Superintendent of Documents, Government Printing Office, Washington, D. C., at 5 cents each, or 50 cents a year.

[2] Owing to the large accumulation of Notices of Judgment now awaiting publication, the plan of issuing supplements to the Bureau of Chemistry Serivce and Regulatory Announcements has been adopted. Such supplements will be published in the future whenever it is necessary to issue an excessive number of Notices of Judgment.

**3410. Misbranding of morphin habit cure. U. S. v. E. B. Meeks (Dr. Winder Drug Co.). Plea of guilty. Fine, $100 and costs.** (F. & D. No. 3944. I. S. No. 9807–c.)

On January 20, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against E. B. Meeks, doing business as the Dr. Winder Drug Co., Chicago, Ill., alleging shipment by said defendant in violation of the Food and Drugs Act, on May 23, 1911, from the State of Illinois into the District of Columbia, of a quantity of a drug product for the cure of the morphin habit, contained in one bottle of liquid medicine and four packages containing one powder each.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results: Alcohol in the liquid, 88.5 per cent by volume. Morphin sulphate in the powders: No. 1, 92.79 per cent; No. 2, 88.04 per cent; No. 3, 70 per cent; No. 4, 69 per cent.

It was alleged in the information that the product was misbranded in that the bottle aforesaid containing the liquid medicine bore a label in words and figures as follows, to wit: "Directions. The contents of this bottle is highly concentrated and must be diluted with water before using. Take 4 eight ounce bottles, or 4 full size half-pints, eight oz. is a half-pint, number them one, two, three and four, then divide this liquid equally in them, then fill them about two-thirds full with water, let them stand over night, then dissolve the accompanying powders in the bottles of the same number, then fill up with water. The powders will dissolve more readily if the contents of the bottle is hot. The concentration is about 75 per cent alcohol, used as a preservative only," which said statement on the label was false and misleading, in that said statement represented to the purchaser that the product contained 75 per cent alcohol, whereas, in truth and in fact, it contained 88.5 per cent of alcohol. Misbranding was alleged for the further reason that said statement on the label was not a correct statement of the quantity or proportion of alcohol contained in said bottle in that said statement represented to the purchaser that the product contained 75 per cent of alcohol, whereas, in truth and in fact, it contained 88.5 per cent of alcohol. Misbranding was alleged for the further reason that said statement on the label did not include a statement of the quantity or proportion of alcohol contained in the bottle aforesaid, printed from type equivalent in size to 8-point (brevier) capitals or larger, in accordance with the provisions of paragraph B of Regulation 28, as amended by Food Inspection Decision No. 112, and the provisions of paragraph C of Regulation 17, as amended by Food Inspection Decision No. 84, of the rules and regulations adopted by the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor for the enforcement of the act of Congress aforesaid; but the said statement on the label aforesaid did include a statement of the quantity of alcohol contained in the bottle aforesaid printed from type smaller in size than 8-point (brevier) capitals, when the size of the bottle in which had been placed the drug product aforesaid would permit of a statement on the label aforesaid of the quantity or proportion of alcohol contained in the bottle aforesaid, printed from type equivalent in size to 8-point (brevier) capitals.

It was further alleged in the information that the product was misbranded in that the packages containing the powders aforesaid bore a label in words and figures as follows, to wit: "Caution. This remedy is poisonous to any one not accustomed to the use of opiates, therefore it must be kept away from children and curious people. When properly diluted it contains about 15 per cent alcohol and there would be 12 (or 11, or 10½ or 10, respectively) grains of morphine sulphate in each fluid oz. Dose—2 fluid drachms (or 2 common teaspoonfuls) before each meal and before retiring. An 8 oz. bottle will last 8 days. There

are 32 doses in an 8 oz. bottle. Notice. Keep the liver and bowels active with purgatives. Always shake the bottle.", which said statement on the label appearing on the packages containing the powders aforesaid did not include a statement of the quantity or proportion of morphin sulphate in each of the packages containing the powders aforesaid in grains [or minims] per ounce [or fluid ounces] in accordance with the provisions of regulation 30 of the rules and regulations adopted October 17, 1906, for the enforcement of the act of Congress aforesaid, but said statement on the label aforesaid stated the quantity of morphin sulphate in each package containing one of the powders aforesaid to be [when properly diluted] 12 grains in each fluid ounce; in another of the powders aforesaid to be 11 grains in each fluid ounce; in another of the powders to be 10½ grains in each fluid ounce; and in the last powder to be 10 grains in each fluid ounce; whereas, in truth and in fact, the package containing the first powder aforesaid contained 92.7 per cent of morphin sulphate, or approximately 405.5 grains per ounce; the second powder contained 88.4 per cent of morphin sulphate, or approximately 385 grains per ounce; the third powder contained 84 [70 (?)] per cent of morphin sulphate, or approximately 367.5 [306.3 (?)] grains per ounce; and the fourth powder contained 69 per cent of morphin sulphate, or approximately 301.1 grains per ounce.

On May 9, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of $100 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3411.** (Supplement to Notice of Judgment 2859.) **Adulteration of frozen eggs. U. S. v. 13 Crates of Frozen Eggs; and Armour & Co., Claimant, v. U. S. Judgment of District Court, on appeal, ordering the condemnation, forfeiture, and destruction of the product, affirmed. Writ of error dismissed.** (F. & D. No. 4012. I. S. No. 18747–d. S. No. 1390.)

On December 11, 1913, Armour & Co., New York, N. Y., claimants of 13 crates of frozen eggs, which had been condemned and forfeited in the United States District Court for the Southern District of New York, after a trial by jury resulting favorably to the Government, filed their assignments of error and an appeal was allowed to the United States Circuit Court of Appeals for the Second Circuit. On April 6, 1914, said claimants filed additional assignments of error and a writ of error was allowed. On June 3, 1914, the case having come up for hearing on said appeal and writ of error, the judgment of the District Court condemning and forfeiting the product and ordering its destruction was affirmed and the writ of error dismissed, as will more fully appear from the following opinions by the said Circuit Court of Appeals before Coxe and Richards, circuit judges, and Mayer, district judge (Coxe, *J.*):

The question involved in this controversy is simply this—whether decayed frozen eggs taken from the shell and mixed together are within the prohibition of the act of Congress which prohibits the transportation from one State to another of any adulterated article of food.

We are clearly of the opinion that they are and that the question of intent of either the shipper or the consignee has nothing to do with the question. The law could not be enforced if the Government is compelled in the case of articles clearly prohibited from interstate commerce to establish the wrongful intent of the parties. It is enough that such articles are prohibited. All that it is necessary for the Government to show is that an adulterated article of food has been transported in interstate commerce and it has amply shown this in the present case. Judge Ray has found the facts and correctly stated the principles of law applicable.

The judgment is affirmed.

In view of our decision in the case of the United States *v.* Thirteen Crates of Frozen Eggs, decided at this term, it is hardly to be expected that a conclusion in favor of the plaintiff in error would be reached herein even if we

were permitted to review the questions presented at the argument and in the briefs. But we are not permitted to review these questions because there is no bill of exceptions. None of the questions discussed is properly before us.

The writ of error is dismissed.

On June 10, 1914, the mandate of the Circuit Court of Appeals was filed in the District Court of the United States for the Southern District of New York, and on June 10, 1914, a writ for the destruction of the property was issued.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 28, 1914.*

**3412. Adulteration and misbranding of asafetida. U. S. v. Meyer Bros. Drug Co. Plea of guilty. Fine, $50 and costs.** (F. & D. No. 4018. I. S. No. 12229–d.)

On February 15, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Meyer Bros. Drug Co., a corporation, St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about August 26, 1911, from the State of Missouri into the State of Texas, of a quantity of asafetida which was adulterated and misbranded. The product was labeled: "Five Pounds Asafœtida Select—Powdered 30% Soluble Asafœtida Guaranteed by Meyer Brothers Drug Co. Saint Louis Under the Food and Drugs Act. June 30, 1906. No. 55 11822."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Alcohol-soluble material (per cent) | 19.12 |
| Alcohol-insoluble material (per cent) | 80.88 |
| Ash (per cent) | 68.67 |

Adulteration was alleged in the information for the reason that said article and product was sold and labeled under and by a name recognized in the United States Pharmacopœia, to wit, "Asafetida," and said article and product differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia official at the time of said shipment and investigation in this, to wit: That said Pharmacopœia, at the times mentioned above, prescribed that asafetida, when incinerated, should yield not more than 15 per cent of ash, whereas said article and product, when incinerated, yielded about 68 per cent of ash, and its own standard of strength, quality, and purity, as regards ash, was not declared upon the label upon said case or packages. Misbranding was alleged for the reason that said article and product was a drug and was sold under and by a name recognized in the United States Pharmacopœia, to wit, "Asafetida," and that said article was labeled so as to convey the impression that it conformed to the standard of strength and quality and purity set forth in said United States Pharmacopœia official at the time of said shipment and of investigation, whereas in fact said product differed from said standard in that it yielded an excessive amount of ash upon incineration; and said article and product was further misbranded in that the said statement on said label, to wit, "30% Soluble," was false and misleading for the reason that it conveyed the impression and would lead the purchaser thereof to believe that said product contained 30 per cent of alcohol soluble material, whereas, in fact, it contained only about 19 per cent of alcohol soluble material.

On May 9, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $50 and costs.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 28, 1914.*

**3413. Alleged adulteration of milk. U. S. v. H. O. Hopkins. Tried to the court and a jury. Verdict of not guilty.** (F. & D. No. 4076. I. S. No. 2389-d.)

On July 15, 1912, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against H. O. Hopkins, Plainfield, Conn., alleging the shipment by said defendant in violation of the Food and Drugs Act, on September 6, 1911, from the State of Connecticut into the State of Rhode Island, of a quantity of milk which was alleged to have been adulterated.

Bacteriological examination of a sample of the product by the Bureau of Chemistry of this department showed the following results: 200,000 organisms per cc on plain agar after 2 days' incubation at 37° C.; 20,000,000 organisms per cc on lactose litmus agar after 2 days' incubation at 25° C., of which 16,000,000 were acid types; 1,000,000 gas-producing organisms and 1,000,000 streptococci present per cc.

Adulteration of the product was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and [or] putrid animal or vegetable substance.

On July 23, 1912, the defendant entered his plea of not guilty to the information. On March 10, 1914, the cause having come on for trial before the court and a jury, after the submision of evidence and argument by counsel, the following charge was delivered to the jury by the court (Thomas *J.*):

Gentlemen of the jury, in June, 1906, Congress passed a law commonly known as the Food and Drugs Act, by which it was sought to better protect the consuming public against the scheming manufacturers of food and drugs. Among many other things it is provided in that law that it shall be unlawful for any person to manufacture any article of food that is adulterated within the meaning of the act. The act further provides, so far as this inquiry is concerned, that an article of food shall be deemed to be adulterated "if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance." It further provides, as pertinent to this inquiry, "that the introduction into any State from any other State of any article of food which is adulterated within the meaning of this act is hereby prohibited, and any person who shall ship or who shall deliver for shipment from any State to any other State any such article which is adulterated within the meaning of this act shall be guilty of a misdemeanor. You will see that the act defines what is an adulterated article of food.

Now, this is a criminal prosecution. In every criminal case the law presumes that the accused is innocent until his guilt is established, and in this case it must be established by the Government beyond a reasonable doubt. The presumption of innocence in favor of an accused person follows him throughout the trial until sufficient evidence has been adduced by the Government to induce in your minds the belief that he is guilty beyond a reasonable doubt. At the beginning of every judicial inquiry the law says that he who asserts the affirmative of any proposition of fact assumes the burden of proof; that is, he must prove what he says. Where claims are made upon one side and denied upon the other, as here, the parties are at issue upon the truth of those claims, and the law in this case places the burden of proving those claims upon the Government. The burden of proof in this case is not discharged until the Government has proved all the material allegations of the indictment beyond a reasonable doubt, and if it fails to prove all of the material allegations beyond a reasonable doubt, then it has failed to sustain the burden which the law imposes upon it, and the accused is entitled to an acquittal.

What is a reasonable doubt? Not all phrases are aptly or accurately defined by the use of the words themselves, but in this case it may be fairly stated that a reasonable doubt may be defined by the use of the words themselves. It is such a doubt as a reasonable man would entertain in determining or deciding the important and graver affairs of life. It is not a mere guess, whim, conjecture, or possibility; it is a reasonable doubt arising in your minds after a careful consideration of all the evidence in the case so that you are unable to

say that you are reasonably certain that the Government has proven all of the material allegations of the indictment, and in this connection I charge you that if the Government fails to sustain the burden of proof or that you entertain a reasonable doubt as to any one of the material allegations of the indictment, then even the accused is entitled to the benefit of the doubt arising in your mind and should be acquitted, the same as he should be convicted in case you find that the Government has sustained the burden of proof and has satisfied you, beyond a reasonable doubt, of the truth of all of the material allegations of the indictment.

In weighing the evidence and determining the credibility of the witnesses and each of them you should look to the manner and demeanor of each witness in testifying; to the readiness and willingness or tardiness or unwillingness, if any, in answering upon the one side or the other; to whether the witnesses, or any of them, have any bias or interest or not; to the witness's means of knowledge and opportunity for knowing the facts he has testified to and professes to know and understand; to the reasonableness or unreasonableness and the probability or improbability of the circumstances related by the witnesses when considered in connection with all the facts and circumstances in evidence before you. And having thus carefully considered all these matters the jury must fix the weight and the value of the testimony of each and every witness and the evidence as a whole, and are not compelled to accept as true any statement made by any witness unless you find such statement to be true after considering the same in connection with all of the facts and circumstances in evidence before you, reconciling, as far as possible, any conflicting evidence.

It is true that the jury is a tribunal which is regarded by the law as one especially fitted to decide controverted questions of fact upon the evidence. The jury decides how much credibility is to be given to each witness, what weight justly belongs to the evidence, and between the statements of hostile and contradictory witnesses, where the truth lies. A juror must use all his experience, his knowledge of human nature, his knowledge of human events, past and present, his knowledge of the motives which influence and control human action, and test the evidence in this case according to such knowledge, and render his verdict accordingly. The juror who does not do this is remiss in his duty. It is properly within your province, in listening to the testimony of the witnesses, to observe their demeanor on the witness stand, their manner and bearing, intelligence and character, and means of knowledge, and to take into consideration, as I have said, any interest or bias any witness may have or entertain, and to reconcile, as far as possible, any conflicting evidence.

Before I address myself to the question particularly involved in this case I ought to and do remind and charge you that you and you alone are the sole judges of the questions of fact which arise here, and you are to determine these questions upon a careful consideration of all of the evidence before you without direction or suggestion from the court as to what weight or value you should give to all or any part of the testimony; nor are you in any way to be governed in your conclusions by any opinion the court might seem to express or to give you.

A juror's first concern, where the parties are in flat conflict as to the essential facts, where the evidence is contradictory, is naturally to determine what the real facts are. You are to be guided in your performance of that duty by the court only in following the law which the court gives you. So that, while you are in every essential sense the sole judges of the facts, you are answerable to the court for the application of the law to the facts as you find them, and you must receive from the court and apply to the case such instructions upon the law applicable to the case arising here as shall guide your deliberations toward a verdict in harmony with the law's requirements. In considering this case and in drawing your conclusions you will necessarily be guided to some extent by the testimony of expert witnesses. I therefore deem it necessary to instruct you with reference to the evidence of such witnesses. An expert witness is one who is skilled in any particular art, trade, or profession, being possessed of peculiar knowledge concerning the same, acquired by study, observation, and practice. The jury is not bound by expert testimony necessarily but such testimony should be considered by you in connection with the other evidence in the case. Their testimony is subject to your consideration and your supervision and your judgment. Such testimony is to be taken and treated by you like the testimony of other witnesses. Their opinions are subject to the same rules of credit or discredit as the testimony of the other witnesses and are not necessarily conclusive upon the jury. Whether the matters testified to

by them are facts, whether they are true or false, is to be determined by the jury alone, and you will carefully consider and examine their testimony in connection with all the other testimony in this case, as I say, subject to the same rules of credit and disbelief as the testimony of other witnesses.

The material allegations of the information are as follows, all of which you must find to have been proven beyond a reasonable doubt before you can find the defendant guilty:

First. That H. O. Hopkins, the defendant, did unlawfully ship certain milk on September 6, 1911, and that it was the subject of an interstate shipment; that is, from one State to another, for it is only in an interstate shipment that the Federal courts have jurisdiction; or that he delivered for shipment said milk.

Second. That said milk was the subject of an interstate shipment—that is, from one State to another—in this case from Connecticut into Rhode Island.

Third. That said milk was an article of food.

Fourth. That said milk was adulterated.

Fifth. That the adulteration consisted in part of a filthy, decomposed, or putrid animal or vegetable substance.

Sixth. That no other person or agency save the defendant himself, or his authorized agents, caused this milk to be adulterated.

Under the first essential there has been much testimony with reference to the initials "H. O. H.," "H. H. O.," and "H. H." If you entertain a reasonable doubt from all the evidence about the sample taken by Mr. Meserve, the Government's inspector, and analyzed by Dr. Stiles, the Government's bacteriologist; if you entertain a doubt about this milk being the defendant's milk, your inquiry is ended, and the defendant is entitled to the benefit of the doubt and should be acquitted. If you believe that it was the defendant's milk that was analyzed, you will pursue your inquiry and ascertain whether it was adulterated at the time the defendant left it on the depot platform at Plainfield. If you find that it was adulterated after he left it at the depot platform at Plainfield, either through the direct act of some one else adulterating it, the defendant should be acquitted, or if you find that it was adulterated through an indirect agency, through any foreign substance getting into the cans, or that it was old or impure milk through no fault of the defendant, because it was not properly iced or because it had been allowed to stand on the day in question, when the temperature was, as testified by Mr. Tarr, 70° at 6 a. m. and 84° at noon, you could not then find the defendant guilty. You must take into consideration the conditions under which this milk was produced. In view of the fact that the evidence was given some days ago, I will recall to your minds some of it. You will remember the testimony of the defendant, giving you in detail the conditions under which he produced his milk; where he kept his cans and how he milked and when he milked and what he did with it after he drew the milk and the manner in which he eventually got it to the depot. If you find, as I say, that this milk was produced under those conditions, and being produced under such conditions as to satisfy you that it was not adulterated, as I have heretofore explained to you, and if you believe that at the time it was left by him at the depot platform at Plainfield that it was not adulterated within the meaning of this act, why, then, of course you could not find the defendant guilty. On the other hand, if you do believe, as it has been testified, that at the time it was left at the depot platform at Plainfield that it was adulterated within the meaning of this act and that this adulteration consisted of a filthy, decomposed animal or vegetable substance, why, of course, then the defendant would be guilty. In assisting you in arriving at your conclusion with reference to the adulteration you have the testimony of the experts. In behalf of the Government the testimony shows that these samples were taken at the depot in Providence, after the train had arrived in Providence. Defendant claims that ample time had intervened from the time he left it at the depot platform in Plainfield until the samples were taken by the experts for foreign substances, in a number of ways, to have gotten into those cans, either through the water from the ice filtering through the wooden stoppers, around the edges, or through some person willfully opening a can and putting in foreign substance of this nature. Of course if you find those facts to be true the defendant would not be guilty; and, on the other hand, if you find from all the testimony that such was not the case, but that it was adulterated as it was left there by Mr. Hopkins at the depot platform in Plainfield, why, then, of course he would be guilty. Take in that connection the testimony of the experts; you will recall the testimony of Dr. Stiles for the Government, after he took this sample, taking it in one vial

he dumped it into another one, and he had some cotton in one end of the vial, and that his fingers were on the stopper somewhere, and that he put it in a suit case with some ice, and took it to Boston to his laboratory and analyzed it, the final analysis not occurring until he reached Boston. You are to take all of these matters into consideration, as to whether or not this milk was adulterated at the time Mr. Hopkins left it at the depot platform in Plainfield. And you will recall Dr. Stiles's testimony was to the effect that there were 20,000,000 bacilli, I believe, in the samples; it is for you to determine and for you to find out whether it is true that that was the condition which existed at Plainfield as the cans were delivered by Mr. Hopkins at the depot platform. Prof. Esten, of the Connecticut Agricultural Station, testified, giving his opinion. You will bear in mind that this sample was taken the 6th of September and this defendant knew nothing about it until the 2d day of January following; in consequence of this it was impossible for him or his experts to analyze that particular sample and find out whether his experts would agree with the Government's experts; therefore their expert's opinion is adduced from facts testified to by Dr. Stiles. Prof. Esten testified—if I am not right it is for you to correct me—that, in his opinion, it is quite likely when that milk left Mr. Hopkins's farm or the Plainfield depot it had from 25,000 to 50,000 bacilli in it, and on account of the warmth of the day, if it was not thoroughly iced, that these germs multiplied rapidly and might naturally produce the results as testified to by Dr. Stiles in the interim between the time this milk was left at the depot platform in Plainfield until Dr. Stiles examined it at his laboratory in Boston.

We have had some testimony before us with reference to what is good milk, excellent milk, fair milk, etc. In Connecticut I ought to tell you that we have a statute which provides as follows: "Milk containing more than 1,000,000 bacteria per cubic centimeter shall be considered impure milk." By that it is reasonable to infer that the only inference that can be drawn is that if it does not exceed 1,000,000 it is not impure, but the minute it goes over the million, then it becomes impure milk. So you can use that as a standard as to whether this milk, at the time Mr. Hopkins delivered it on the depot platform at Plainfield, whether it then contained in excess of 1,000,000 bacteria so as to determine the question whether it was old and impure milk. Of course, Mr. Hopkins, the defendant, could not be charged with what happened after he delivered it in Plainfield. The inquiry and what you are to find from all this evidence is, What was the condition of this milk when he left it there at the depot?

The COURT. Mr. James, on your second list of requests do you want those claims stated?

Mr. JAMES. If your honor please.

The COURT. I have been requested to charge by the defendant as follows, and with slight modifications will charge as requested. Much of this is repetition, gentlemen, but in view of the court being requested to charge, I feel in duty bound to and do charge with slight modifications.

The constitutional right of liberty is so sacred that every person coming into court charged with a crime, whether it be a felony or a misdemeanor, is presumed to be innocent until the evidence overcomes that presumption of innocence to a degree arising to the mental condition of the jury whereby there shall be no reasonable doubt. By reasonable doubt we mean just what those words indicate; a doubt arising beyond reason that develops from the evidence—that grows out of the evidence; not beyond a conjecture of a doubt, but a reasonable doubt. This respondent, Mr. Hopkins, is charged here with the violation of the pure-food act, so called. Now, a little analysis of the law may aid you somewhat, probably materially, in disposing of this question. The law, as applied to this case, is, to use the language of the law, "that it shall be unlawful for any person to manufacture within the territory of the United States any article of food or drug which is adulterated or misbranded." You observe the language—adulterated or misbranded; unlawfully to manufacture any article of food that is adulterated or misbranded. It is also unlawful for any person to ship or deliver for shipment from one State or Territory to another any such manufactured, adulterated, or misbranded article of food. Now, that is the law, and in order to convict, you must find, beyond a reasonable doubt, that this milk was adulterated within the meaning of the act, as I have defined it. No claim that he manufactured. No claim but what this was milk that came from his dairy of cows. The claim is that the milk was adulterated, and then, in the language of the law, "delivered for shipment into another State." Now, to sustain that you must find, beyond a reasonable doubt, both of those things; first, that the

milk was adulterated, and, second, that he delivered it for shipment at Plainfield into another State, and those two questions you must find beyond a reasonable doubt.

Now, you will naturally ask right off when you retire, what does "adulterate" mean; does it mean the accidental dropping of something into the milk or that something accidentally got into the milk and thereby changed its quality? Is that what is meant by adulteration? Well, now, the law itself says, "If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter," it covers the meaning of "adulterated." Now, you want to think of that pretty carefully—filthy, decomposed, or putrid matter; putrid animal or vegetable substance. The law limits it right down to filthy, decomposed, or putrid animal or vegetable substance.

Take the general scope of this Pure Food and Drugs Act which, in my judgment, is one of the most wholesome acts ever passed by Congress, and it is the duty of the courts to see that it is enforced, was primarily driving at manufactured articles of drugs and food. Now, the question is whether we have a case here that comes up to that point, and we must keep within the law, and you will have to find from this evidence, beyond a reasonable doubt, that not only that milk was impure, but that the impurity consisted of a filthy or a decomposed or of a putrid animal or vegetable substance, in order to bring this man within the law. The law addressed itself to your common sense as to whether those things that were found in this milk show a state of facts that satisfy you, beyond a reasonable doubt, that those things were some one of these that I have enumerated and that this milk in question was adulterated, either through a purpose on the part of this defendant or through carelessness—no claim of its being done on purpose, nobody claims that, for it is conceded here that he is a good, upright man; now, that may be by carelessness and a criminal carelessness, that is for you to say; but if you do not find that this milk was adulterated with some of these things that I have enumerated, that is the end of your inquiry and your verdict should be "Not guilty." If you do find that the impurities in that milk come within the definition that I have just read to you, then you should inquire as to whether or not the evidence satisfies you, beyond a reasonable doubt, that it was the defendant's carelessness that got that impurity into the milk, and you will find that in the evidence.

There are just two branches of evidence—one is as to just what the chemists found there and the other as to the care the defendant took—and if in considering those two questions you have a reasonable doubt, then you are to find in behalf of the defendant; if not, then it is your duty to convict. So the case rests right there.

And I want to say right here that no matter what the court may have said about the facts in this case as indicating to your mind what I think you ought to do, that is of no consequence; whether I think this man was guilty or not. You are not to guess as to what I think; you are to pass upon that, and when I allude to the testimony it is merely to illustrate the law and the question of the law; you take care of the facts.

The COURT. Any exceptions?

Mr. SCOTT. I except to that portion of the charge where you state that the law was primarily aimed at manufactured articles of food.

The COURT. I think it would be fair to say in connection with that that the law was primarily aimed at manufactured articles of food and drugs, and adulterated articles of food and drugs. I am charging you that it is also aimed at adulterated articles of food and drugs.

Mr. SCOTT. I except to that portion that it was primarily aimed at manufactured articles of food and drugs and the adulteration of food and drugs.

The COURT. Exception noted on the part of the Government.

Gentlemen, you may retire, and when you have agreed upon a verdict let me know.

The jury thereupon retired, and after due deliberation returned into court with a verdict of not guilty.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 25, 1914.*

**3414. Adulteration and misbranding of cove oysters. U. S. v. Dunbars, Lopez & Dukate Co., a corporation. Plea of guilty. Fine, $25 and costs.** (F. & D. No. 4191. I. S. No. 14156-d.)

On October 23, 1912, the United States attorney for the Southern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Dunbars, Lopez & Dukate Co., a corporation, Biloxi, Miss., alleging shipment by said company in violation of the Food and Drugs Act, on or about November 11, 1911, from the State of Mississippi into the State of Tennessee, of a quantity of cove oysters which were adulterated and misbranded. The product was labeled: "Pelican Brand Cove Oysters—Weight Oyster Meat 4 Ounces.—Packed by Dunbars, Lopez & Dukate Co., New Orleans, La., Biloxi, Miss.—U. S. Serial No. A-1446. Guaranteed by the packers under the Food & Drugs Act June 30, 1906."

Examination of sample cans of the product by the Bureau of Chemistry of this department showed the following results:

| Meat. | Liquid. | Meat. | Liquid. |
|---|---|---|---|
| *Ounces.* | *Ounces.* | *Ounces.* | *Ounces.* |
| 2.89 | 7.37 | 2.47 | 7.52 |
| 2.75 | 7.66 | 2.37 | 7.91 |
| 2.65 | 7.62 | 2.68 | 7.41 |

Oyster meat, average weight, 2.6 ounces.
Liquid, average weight, 7.5 ounces.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, water, had been used [mixed] with it so as to reduce or lower its quality or strength and had been substituted in part for the genuine article. Misbranding was alleged for the reason that the statement "Weight Oyster Meat 4 Ounces," borne on the label thereof of each can, was false and misleading, as each can did not contain 4 ounces of oyster meat, and said product was further misbranded in that it was in package form and the contents were stated in terms of weight and were not correctly stated on the outside of the package.

On February 19, 1913, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3415. Adulteration and misbranding of vinegar. U. S. v. National Pickle & Canning Co. Plea of guilty. Fine, $10.** (F. & D. No. 4198. I. S. No. 12494-d.)

On February 15, 1913, the United States attorney for the Eastern District of Missouri filed in the District Court of the United States for said district an information against the National Pickle & Canning Co., a corporation, St. Louis, Mo., alleging shipment by said company in violation of the Food and Drugs Act, on or about September 26, 1911, from the State of Missouri into the State of New Mexico of a quantity of vinegar which was adulterated and misbranded. The bottle containing the article was labeled: (Neck label): "Cupid Brand (Monogram DB) Vinegar Guaranteed by N. P. & C. Co. to comply with State and National Food Laws." (Principal label): "Choice High Grade Genuine Apple Juice Vinegar—National Pickle & Canning Co. Dodson-Braun Branch St. Louis, U. S. A."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Solids (grams per 100 cc) | 0.27 |
| Nonsugar solids (grams per 100 cc) | 0.19 |
| Reducing sugar, invert before inversion after evaporation (grams per 100 cc) | 0.08 |
| Sugar in solids (per cent) | 29 |
| Polarization, direct, 20° C. (°V.) | −1.0 |
| Ash (grams per 100 cc) | 0.04 |
| Acid, as acetic (grams per 100 cc) | 5.34 |
| Fixed acid, as malic (grams per 100 cc) | 0.00 |
| Lead precipitate: Trace. | |
| Color (degrees, brewer's scale, 0.5 inch cell) | 0.5 |

Adulteration was alleged in the information for the reason that said article and product was not apple-juice vinegar, and a dilute solution of acetic acid or distilled vinegar had been substituted wholly or in large part for the genuine article, to wit, apple-juice vinegar, and that said product was further adulterated within the meaning of said act for the reason that it had been mixed in a manner whereby its inferiority was concealed.

Misbranding was alleged for the reason that the statement "Apple Juice Vinegar," borne upon the label aforesaid, was false and misleading for the reason that said product was not apple-juice vinegar, but consisted of a dilute solution of acetic acid or distilled vinegar; and said product was further misbranded in that it was an imitation of and offered for sale under the distinctive name of another article, to wit, "Apple Juice Vinegar," whereas said product was not apple-juice vinegar; and said product was further misbranded in that it was labeled and branded so as to mislead and deceive the purchaser thereof, being labeled "Apple Juice Vinegar," whereas, in truth and in fact, said article was not apple-juice vinegar, but, on the contrary thereof, consisted of a dilute solution of acetic acid or distilled vinegar.

On May 13, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3416. Adulteration of extract of cloves and extract of wintergreen. U. S. v. Warner-Jenkinson Co. Plea of guilty. Fine, $25 on first and eleventh counts of information; all other counts dismissed by United States attorney.** (F. & D. No. 4202. I. S. Nos. 16562–d, 16563–d, 16565–d, 16567–d, 16568–d, 16569–d, 16570–d, 16572–d, 16594–d.)

On June 13, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in 19 counts against the Warner-Jenkinson Co., St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about February 9, 1912, from the State of Missouri into the State of Tennessee, of various articles of food, among which were quantities of extract of cloves and extract of wintergreen, which were adulterated. The extract of cloves was labeled: "Ext. Cloves From Warner-Jenkinson Co. St. Louis, Mo."

Analysis of a sample of this product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Alcohol (per cent) | 45.30 |
| Methyl alcohol: Absent. | |
| Oil (grams per 100 cc) | 0.74 |
| Refractive index of oil at 22° C. | 1.5312 |

**Color: Not coal tar; appears to be natural.**

Adulteration of the product was alleged in the first count of the information for the reason that clove extract is understood by the trade and the public generally to be the flavoring extract prepared from oil of cloves and contains not less than 2 per cent by volume of oil of cloves; and a substance, that is to say, a dilute solution of alcohol, containing only a small amount of clove oil and less than 2 per cent thereof, had been mixed and packed with the product in such manner as to reduce and lower and injuriously affect its quality and strength, so that said product contained less than 2 per cent of oil of cloves, and for the further reason that a substance, to wit, a dilute solution of alcohol containing only a small amount of clove oil had been substituted wholly or in part for the genuine article, to wit, extract of cloves.

The extract of wintergreen was labeled: "Ext. Wintergreen. From Warner-Jenkinson Co. St. Louis, Mo."

Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Oil (per cent by volume) | 0.57 |
| Alcohol (per cent by volume) | 45.31 |

Methyl alcohol: None.
Colorless.

Adulteration of this product was alleged in the eleventh count of the information for the reason that wintergreen extract, as understood by the trade and the public generally, is the flavoring extract prepared from oil of wintergreen and contains not less than 3 per cent by volume of oil of wintergreen; and said product was adulterated, in that a substance, to wit, a dilute extract of wintergreen, had been mixed and packed with it in such a manner as to reduce, lower, and injuriously affect its quality and strength, and, further, in that a substance, to wit, a dilute extract of wintergreen, had been substituted wholly or in large part for the genuine article, to wit, extract of wintergreen.

On May 12, 1914, the defendant company entered a plea of guilty to the first and eleventh counts of the information and the court imposed a fine of $25. All the other counts of the information containing charges of misbranding as to the extracts named above, and charges of adulteration and misbranding as to various other extracts were dismissed by the United States attorney.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3417. Adulteration and misbranding of scuppernong wine. U. S. v. 22 Cases of Scuppernong Wine. Default decree of condemnation and forfeiture. Goods distributed to charitable institutions.** (F. & D. No. 4507. I. S. No. 517-e. S. No. 1502.)

On September 12, 1912, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 22 cases, each containing 12 bottles of so-called scuppernong wine, remaining unsold in the original unbroken packages, at Detroit, Mich., alleging that the product had been shipped on July 20, 1912, and transported from the State of Ohio into the State of Michigan, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Special Wine—Belle of the Valley—Scuppernong Bouquet—Trade Mark—Delaware and Scuppernong Blend Ameliorated with Sugar Solution" "Guaranteed by the Sweet Valley Wine Company under the Food & Drugs Act of June 30, 1906. Special—Trade Mark."

It was alleged in the libel that the article of food was misbranded in violation of paragraph 1 of section 8 of the Food and Drugs Act, and also in viola-

tion of paragraphs 1, 2, and 4 of said section 8, under the classification of "Food" in said act; and was further liable to condemnation in that it was adulterated in violation of section 7 of said Food and Drugs Act and of paragraphs 1 and 2 under "Food" in said act, an examination of the samples of the product by the Bureau of Chemistry of the Department of Agriculture having revealed that said product was imitation scuppernong wine, prepared wholly or in part of [from(?)] a mixture of pomace wine and other wines, and very little, if any, scuppernong wine, thus reducing or injuriously affecting its quality and strength as aforesaid, said misbranding, labeling, and adulteration, as aforesaid, constituting a violation within the meaning of the act of June 30, 1906.

On April 27, 1914, the case having come on for final hearing, judgment of condemnation and forfeiture by default was taken, and it was ordered by the court that the product should be distributed to certain charitable institutions.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 28, 1914.*

**3418. Adulteration and misbranding of lemon and orange extracts. U. S. v. Warner-Jenkinson Co. Plea of guilty. Fine, $20.** (F. & D. No. 4611. I. S. Nos. 19301–d, 19302–d.)

On June 13, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Warner-Jenkinson Co., a corporation, St. Louis, Mo., alleging shipment by said company in violation of the Food and Drugs Act, on or about February 29, 1912, from the State of Missouri into the State of Iowa, of a quantity of lemon and orange extracts, which were adulterated and misbranded.

The lemon extract was labeled: "Pure Extract Terpeneless Messina Lemon * * * Serial No. 2008. Warner-Jenkinson Co. St. Louis, Mo."

Analysis of a sample of this product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Alcohol (per cent by volume) | 43.28 |
| Citral (Chase) (per cent by weight) | 0.09 |
| Citral (Hiltner) (per cent by weight) | 0.12 |

Methyl alcohol: None.
Oil by precipitation: None.
Oil by polarization: None.
Coloring matter appears to be vegetable; unidentified.

Adulteration of the product was alleged in the information, for the reason that a dilute terpeneless extract of lemon had been mixed and packed with it in such manner as to reduce and lower and injuriously affect its quality and strength, and in that a dilute terpeneless extract of lemon had been substituted wholly or in large part for said article and product; that terpeneless extract of lemon, as understood by the trade and the public generally, is a flavoring extract prepared by shaking oil of lemon with dilute alcohol, or by dissolving terpeneless oil of lemon in dilute alcohol, and contains not less than two-tenths per cent by weight of citral derived from oil of lemon; and said product was not terpeneless extract of lemon as so understood by the trade and public generally. Misbranding was alleged for the reason that the statement "Pure Extract Terpeneless Messina Lemon," borne on the label, was false and misleading, because it created the impression and led the purchaser to believe that the product was a genuine terpeneless lemon extract, when, in truth and in fact, it was a dilute terpeneless lemon extract, and for the fur-

ther reason that the product was labeled and branded so as to deceive and mislead the purchaser, being labeled "Pure Extract Terpeneless Messina Lemon," when, in truth and in fact, it was a dilute terpeneless extract of lemon.

The orange extract was labeled: "Soluble Orange Extract Artificial Color added * * * Serial No. 2008 Warner-Jenkinson Co., St. Louis, Mo."

Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Alcohol (per cent by volume) | 38.80 |
| Citral (Chace) (per cent by weight) | 0.03 |
| Citral (Hiltner) (per cent by weight) | 0.02 |

Oil by precipitation: None.
Oil by polarization: None.
Coloring matter appears to be vegetable; unidentified.

Adulteration of this product was alleged in the information for the reason that a dilute solution of alcohol artificially colored, which contained little or no flavoring derived from orange oil, had been mixed and packed with it in such manner as to reduce and lower and injuriously affect its quality and strength; and, further, in that a dilute solution of alcohol artificially colored, which contained little or no flavoring derived from orange oil, had been substituted wholly or in large part for the article; and, further, that it was colored in a manner whereby inferiority was concealed. Misbranding was alleged for the reason that the statement "Soluble Orange Extract Artificial Color added," borne on the label, was false and misleading, because it created the impression and led the purchaser to believe that said product was a genuine soluble orange extract containing artificial coloration, whereas, in truth and in fact, said product was a dilute solution of alcohol artificially colored and contained little or no flavoring derived from orange oil; and said product was further misbranded, in that it was labeled and branded so as to deceive and mislead the purchaser, being labeled "Soluble Orange Extract Artificial Color added," when, in truth and in fact, it was a dilute solution of alcohol containing but little, if any, orange flavor artificially colored.

On May 12, 1914, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $20.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3419. Adulteration of Tomato Catsup. U. S. v. 65 Cases of Tomato Catsup. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 4715. I. S. No. 2350-e. S. No. 1551.)**

On October 28, 1912, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 65 cases, each containing 24 bottles, of tomato catsup, remaining unsold in the original unbroken packages at Albany, Ga., alleging that the product had been shipped on or about October 2, 1912, and transported from the State of Maryland into the State of Georgia, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "2 Doz. 8 Ounce Atlas Brand Tomato Catsup. Atlas Preserving Co. Baltimore, Md." The bottles were labeled: "Tomato catsup Atlas Brand, Tomatoes combined with Gran. Sugar, Distilled Vinegar, Salt, pure Spices, prepared with care, Atlas Preserving Co. Baltimore, Md."

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of filthy and [or] decomposed vegetable substance.

On April 16, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 28, 1914.*

**3420. Adulteration and misbranding of cream. U. S. v. Henry Klocke. Plea of guilty. Fine, $20 and costs.** (F. & D. No. 4752. I. S. Nos. 36896-e, 37951-e.)

On December 3, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Henry Klocke, Ewing, Mo., alleging shipment by said defendant in violation of the Food and Drugs Act on July 24, 1912, from the State of Missouri into the State of Illinois, of a quantity of cream, contained in cans, which was adulterated and misbranded. One of the 8-gallon cans was labeled: "Henry Klocke, Ewing Mo.—William Mast, Ice Cream, Milk and Cream. 422 S. Eighth St., Quincy, Ill."; "Klocke, Ewing, 18." One of the 10-gallon cans was labeled: "Henry Klocke, Ewing, Mo. William Mast, Ice Cream, Milk and Cream. 422 S. Eighth St., Quincy, Ill."; "Klocke, Ewing, Mo."

Analysis of a sample of the product from one of these cans by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Fat by Röse-Gottlieb (per cent) | 15.09 |
| Fat by Babcock (per cent) | 16.5 |
| Specific gravity at 58° F | 1.021 |

Formaldehyde: Negative.
Color: Negative.

Analysis of a sample from the other of the cans by said bureau showed the following results:

| | |
|---|---|
| Fat by Röse-Gottlieb (per cent) | 16.4 |
| Fat by Babcock (per cent) | 17.0 |
| Specific gravity at 58° F | 1.019 |

Formaldehyde: Negative.
Color: Negative.

Adulteration of the product was alleged in the information for the reason that said product was sold by the defendant under a contract with the purchaser as 20 per cent cream, and that cream, as the same is known and understood in the trade and by persons dealing in and using the same, contains not less than 18 per cent of milk fat, and said product was adulterated in that milk containing approximately 16 per cent of butter fat, and a materially less quantity than 18 per cent, had been substituted wholly or in large part for the cream which said article purported to be. Misbranding was alleged for the reason that the product was sold by the defendant as 20 per cent cream, and that cream, as the same is known and understood in the trade and by persons dealing in and using the same, contains not less than 18 per cent of milk fat, and said product was misbranded in that, when so shipped, it was a milk containing approximately 16 per cent of butter fat, and a materially less quantity than 18 per cent of butter fat, and was offered for sale and sold under the distinctive name of another article, to wit, cream, whereas said product was not cream and was not entitled to be called or offered for sale as cream.

On May 25, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $20 and costs.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3421. Adulteration and misbranding of wine (champagne). U. S. v. Theodore Netter. Plea of guilty. Fine, $25 and costs.** (F. & D. No. 4821. I. S. Nos. 12972–d, 12974–d.)

On May 2, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Theodore Netter, Chicago, Ill., alleging shipment by said defendant in violation of the Food and Drugs Act, on July 21, 1911, from the State of Illinois into the State of Michigan, of quantities of two brands of wine which was adulterated and misbranded.

Analyses of samples of each of the brands of wine by the Bureau of Chemistry showed the following results:

| Determination. | No. 1. | No. 2. |
|---|---|---|
| Specific gravity | ..... | 1.0021 |
| Alcohol (per cent by volume) | ..... | 11.77 |
| Total solids (grams per 100 cc) | ..... | 4.47 |
| Sugar-free solids (grams per 100 cc) | ..... | 2.13 |
| Reducing sugar (grams per 100 cc) | ..... | 2.15 |
| Sucrose (grams per 100 cc) | ..... | 0.18 |
| Total acid as tartaric (grams per 100 cc) | 0.713 | 0.713 |
| Fixed acid as tartaric (grams per 100 cc) | 0.438 | 0.486 |
| Volatile acid as acetic (grams per 100 cc) | 0.204 | 0.181 |
| Total tartaric acid (grams per 100 cc) | 0.236 | 0.227 |
| Free tartaric acid (grams per 100 cc) | 0.013 | 0.034 |
| Cream of tartar (grams per 100 cc) | 0.173 | 0.147 |
| Tartaric acid to alkaline earths (grams per 100 cc) | 0.0 | 0.075 |
| Tannin and coloring matter (grams per 100 cc) | ..... | 0.009 |
| Polarization, direct, at 20° C. (° V.) | ..... | −3.0 |
| Polarization, invert, at 20° C. (° V.) | ..... | −4.0 |
| Polarization, invert, at 87° C. (° V.) | ..... | +1.6 |
| Ash (grams per 100 cc) | 0.172 | 0.194 |
| Alkalinity of water-soluble ash (cc N/10 HCl per 100 cc) | 9.2 | 7.8 |
| Alkalinity of water-insoluble ash (cc N/10 HCl per 100 cc) | 5.6 | 5.0 |
| Sodium oxid ($Na_2O$) (grams per 100 cc) | 0.0304 | 0.0330 |
| Potassium oxid ($K_2O$) (grams per 100 cc) | 0.0500 | 0.0454 |
| Chlorin (Cl) (grams per 100 cc) | 0.0458 | 0.0426 |

Adulteration of both of these brands of wine was alleged in the information for the reason that an imitation French champagne of domestic origin, made in part from pomace wine and artificially carbonated, had been substituted wholly for genuine sparkling wine champagne; and for the further reason that an imitation French champagne of domestic origin, made in part from pomace wine and artificially carbonated, had been substituted in part for genuine sparkling wine champagne. Misbranding of one of the brands of wine was alleged in the information for the reason that each of the pint bottles containing the article bore a label, in words and figures as follows, to wit: (Neck label) "Superior Quality Sparkling Serial No. 16477. Wine Extra Dry." (Body label) "Sparkling Wine Chateau De Nort Brand Champagne Type. Guaranteed under the Food and Drugs Act, June 30, 1906.", which said label appearing on each of the bottles was false and misleading in that the statements "Extra Dry" and "Sparkling Wine Chateau De Nort Champagne" represented to the purchaser that the article of food contained in the bottles was a genuine sparkling wine champagne, whereas, in truth and in fact, the article of food aforesaid was not a genuine sparkling wine champagne, but an imitation French champagne of domestic origin made in part from pomace wine and artificially carbonated; and for the further reason that said label misled and deceived the purchaser into the belief that the article of food was a French champagne, whereas, in truth and in fact, it was not a genuine sparkling wine champagne but an imitation French champagne of domestic origin made in part from pomace wine and artificially carbonated. Misbranding was alleged for the

further reason that said label was false and misleading in that the statements "Extra Dry" and "Sparkling Wine Chateau De Nort Champagne" represented that the article of food aforesaid was a foreign product, whereas, in truth and in fact, it was not a genuine sparkling wine champagne, but an imitation French champagne of a domestic origin made in part from pomace wine and artificially carbonated.

Misbranding of the other brand of wine was alleged in the information for the reason that the quart bottles containing the article of food and each of them bore a label in words and figures as follows, to wit: (Cap) "Extra Dry." (neck label) "Extra Dry Superior Quality." (Body label) "Sparkling Wine Serial No. 16477—Extra Dry Les Etoiles D'Or brand. Guaranteed under Food and Drugs Act, June 30, 1906.", which said label appearing on each of the bottles was false and misleading in that the statements "Extra Dry" and "Sparkling Wine Extra Dry Les Etoiles D'Or" represented to the purchaser that the article of food was a genuine sparkling wine champagne, whereas, in truth and in fact, it was not a genuine sparkling wine champagne but an imitation French champagne of domestic origin made in part from pomace wine and artificially carbonated; and for the further reason that said label misled and deceived the purchaser into the belief that the article of food aforesaid was a French champagne, whereas, in truth and in fact, it was not a genuine sparkling wine champagne, but an imitation French champagne of domestic origin, made in part from pomace wine and artificially carbonated; and for the further reason that said label was false and misleading in that the statements "Extra Dry" and "Sparkling Wine Extra Dry Les Etoiles D'Or" represented to the purchaser that the article of food was a genuine sparkling wine champagne, whereas, in truth and in fact, it was not a genuine sparkling wine champagne, but an imitation French champagne of domestic origin made in part from pomace wine and artificially carbonated.

On May 9, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $25 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3422. Adulteration and misbranding of cream. U. S. v. Farmers' & Merchants' Creamery Co. Plea of guilty. Fine, $20 and costs.** (F. & D. No. 4845. I. S. No. 36861-e.)

On April 22, 1914, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Farmers' & Merchants' Creamery Co., a corporation, Palmyra, Mo., alleging shipment by said company in violation of the Food and Drugs Act, on or about July 23, 1912, from the State of Missouri into the State of Illinois, of a quantity of so-called cream which was adulterated and misbranded. The product was labeled: "Creamery Package Mfg. Co., Chicago, U. S. A. From Farmers' & Merchants' Creamery Co., Palmyra, Missouri, to W. A. Schwindeler, Quincy, Ill."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Fat by Röse-Gottlieb (per cent) | 14.11 |
| Fat by Babcock (per cent) | 15.0 |
| Specific gravity at 57° F | 1.021 |

Formaldehyde: Negative.
Color: Negative.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, milk, had been substituted wholly or in large part for the article cream. Misbranding was alleged for the reason that said product was a mixture of cream and milk and was offered for sale under the distinctive name of another article, to wit, cream, whereas said product was not cream.

On May 25, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $20 and costs.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3423. Alleged misbranding of arrowroot biscuit. U. S. v. Empire Biscuit Co. Tried to the court and a jury. Verdict of not guilty by direction of the court.** (F. & D. No. 4898. I. S. No. 37653-e.)

At the March term of the District Court of the United States for the Southern District of New York the United States attorney for the said district, acting upon a report by the Secretary of Agriculture, filed in the district court aforesaid an information against the Empire Biscuit Co., a corporation, New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act, on July 18, 1912, from the State of New York into the State of Massachusetts, of a quantity of arrowroot biscuit which were charged to have been misbranded. The product was labeled: "Empire Biscuit Co. Arrowroot. 28-30-32 Westerly Avenue. High Class Biscuit. Brooklyn, N. Y. 15¼ lbs." Examination of a sample of the product by the Bureau of Chemistry of this department showed that it was composed mostly of wheat starch and a small amount of corn, and that not more than 1 per cent of arrowroot was present.

Misbranding of the product was alleged in the information for the reason that the product was misbranded and labeled so as to deceive and mislead the purchaser thereof, in that the words on the label thereof, "Arrowroot—High Class Biscuit," regarding the said article and the ingredients and substances contained therein, were false and misleading, in that said label would indicate that said article consisted of biscuits containing a sufficient quantity of arrowroot to give said biscuits arrowroot characteristics, whereas, in truth and in fact, said biscuits consisted for the most part of wheat starch and corn, and a very small amount of arrowroot, the said amount being negligible and not sufficient to impart to said biscuits any of the characteristics of arrowroot.

On June 4, 1914, the case having come on for trial before the court and a jury, after the submission of evidence by the Government the defendant company rested its case and moved the court to dismiss. A verdict of not guilty was thereupon directed as follows by the court (Mayer, *J.*):

"The stenographer may note that the verdict about to be directed is not to be taken as a precedent on the question of the percentage of arrowroot. But on the evidence in this case there is nothing which will, in the court's opinion, sustain a verdict.

"The court directs a verdict in favor of the defendant, and the clerk will take the verdict."

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3424. Adulteration and misbranding of cream. U. S. v. Albert W. Anderson. Plea of guilty. Fine, $20 and costs.** (F. & D. No. 4970. I. S. No. 36883-e.)

On December 3, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against

Albert W. Anderson, Ewing, Mo., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about July 23, 1912, from the State of Missouri into the State of Illinois, of a quantity of cream which was adulterated and misbranded. The product was labeled: "To A. L. Brinkman, Quincy, Ill. From A. W. Anderson, Ewing, Mo." (On slip of paper attached to can) "Ewing, Mo., July 23, 1912, A. L. Brinkman. We send you eight (8) gallons of cream today. Will send again Friday or Thursday. A. W. Anderson."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Fat by Röse-Gottlieb (per cent) | 15.44 |
| Fat by Babcock (per cent) | 16.5 |
| Specific gravity at 60° F | 1.018 |
| Formaldehyde: Negative. | |
| Color: Negative. | |

Adulteration of the product was alleged in the information for the reason that it was sold by said defendant under a contract with the purchaser as cream containing from 20 to 22 per cent of fat; and that cream, as the same is known and understood in the trade and by persons dealing in and using the same, contains not less than 18 per cent of milk fat; and that said product was adulterated in that milk containing approximately 16.5 per cent of butter fat, and a materially less quantity than 18 per cent, had been substituted wholly or in large part for the cream which said article purported to be; and, further, in that a substance, to wit, milk, had been substituted wholly or in large part for the genuine article, to wit, cream; and said product, when so shipped and transported, contained only about 16.5 per cent of butter fat and a materially less quantity than 18 per cent. Misbranding was alleged for the reason that the product was a mixture of cream and milk, and contained only about 16.5 per cent of fat and a materially less quantity than 18 per cent of fat, and was an imitation of and was offered for sale under the distinctive name of another article, to wit, cream.

On May 25, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $20 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3425. Misbranding of fruit puddine. U. S. v. The Fruit Puddine Co. (Inc.). Plea of guilty. Fine, $40. Two counts of information nolle prossed.** (F. & D. No. 1069. I. S. Nos. 2820-b, 2823-b, 2824-b.)

On April 16, 1910, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in 10 counts against the Fruit Puddine Co. (Inc.), Baltimore, Md., alleging shipment by said company in violation of the Food and Drugs Act on November 21, 1908, from the State of Maryland into the State of Ohio of a quantity of fruit puddine of assorted flavors, which was misbranded. One portion of the consignment was labeled: "Fruit Flavored Puddine (Trade Mark Registered) Lemon. Fruit Puddine Co., Baltimore, Md., U. S. A. Fruit Puddine Co., Baltimore, Md., U. S. A." (Picture of dish of fruit is also shown.) Another part of the consignment was labeled: "Fruit Flavored Puddine (Trade Mark Registered) Orange. Fruit Puddine Co., Baltimore, Md., U. S. A. Fruit Puddine. Fruit Puddine Co., Baltimore, Md., U. S. A." (Picture of fruit.) Balance of consignment was labeled: "Fruit Flavored Puddine (Trade Mark Registered) Rose Vanilla.

Fruit Puddine Co., Baltimore, Md., U. S. A. Fruit Puddine. Fruit Puddine Co., Baltimore, Md., U. S. A." (Picture of fruit.)

Analysis of samples of the product labeled as orange and lemon flavor showed that it consisted of cornstarch colored with a coal tar dye, namely, Naphthol Yellow S, and slightly flavored with citral. Analysis of a sample of that part of the product marked "rose vanilla" showed that it was cornstarch colored with Cochineal Carmine and flavored with 0.04 of 1 per cent of vanillin.

Misbranding of a part of the product was alleged in the first count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser, in that each of the packages containing the same bore a certain statement regarding the ingredients and substances contained therein, which said statement was false and misleading, each of the packages being labeled as follows: "Fruit Flavored Puddine, Lemon," whereas, in truth and in fact, the said puddine was not fruit flavored. Further misbranding was alleged in the second count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser in that each of the packages bore a certain statement regarding the ingredients and substances contained therein, which said statement was false and misleading, each of the packages being labeled as follows: "Fruit Puddine," "Fruit Flavored Puddine, Lemon," whereas, in truth and in fact, the said puddine was not a fruit puddine and did not contain any fruit. Further misbranding was alleged in the sixth count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser, in that each of the packages bore a certain statement regarding the ingredients and substances contained therein, which said statement was false and misleading, each of the packages being labeled as follows: "Fruit Flavored Puddine, Lemon," whereas in truth and in fact the said puddine was not fruit flavored, but was flavored with citral. Further misbranding was alleged in the seventh count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser in that each of the packages bore a certain design regarding the ingredients and substances contained therein, to wit, a dish of fruit, and bore a certain statement regarding said ingredients and substances, which said statement in effect was that the said puddine was a fruit puddine and a fruit flavored puddine, lemon, which said design and which said statement were false and misleading in that they would import that the said puddine contained fruit, or a fruit flavor, whereas in truth and in fact the said puddine did not contain fruit or a fruit flavor.

Misbranding of another portion of the product was alleged in the third count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser in that each of the packages containing the same bore a certain statement regarding the ingredients and substances contained therein, which said statement was false and misleading, each of the packages being labeled as follows: "Fruit Flavored Puddine, Orange," whereas, in truth and in fact, the said puddine was not fruit flavored. Further misbranding was alleged in the fourth count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser, in that each of the packages bore a certain statement regarding the ingredients and substances contained therein, which said statement was false and misleading, each of the packages being labeled as follows: "Fruit Puddine," "Fruit Flavored Puddine, Orange," whereas, in truth and in fact, the said puddine was not a fruit puddine and did not contain any fruit. Further misbranding was alleged in the eighth count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser, in that each of the packages bore a certain statement regarding the ingredients and substances con-

tained therein, which said statement was false and misleading, each of the packages being labeled as follows: "Fruit Flavored Puddine, Orange," whereas, in truth and in fact, the said puddine was not fruit flavored, but was flavored with citral. Further misbranding was alleged in the ninth count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser, in that each of the packages bore a certain design regarding the ingredients and substances contained therein, to wit, a dish of fruit, and in that each of said packages bore a certain statement regarding the said ingredients and substances, which said statement in effect was that said puddine was a fruit puddine and a fruit flavored puddine, orange, which said design and which said statement were false and misleading, in that they would import that the said puddine contained fruit or a fruit flavor, whereas, in truth and in fact, the said puddine did not contain fruit or a fruit flavor.

Misbranding of the remaining portion of the product was alleged in the fifth count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser, in that each of the packages containing the same bore a certain statement regarding the ingredients and substances contained therein, which said statement was false and misleading, each of the packages being labeled as follows: "Fruit Flavored Puddine, Rose Vanilla," whereas, in truth and in fact, the said puddine did not contain vanilla, but, on the contrary, contained a quantity of vanillin, to wit, 0.04 of 1 per cent. Further misbranding was alleged in the tenth count of the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser, in that each of the packages bore a certain statement regarding the ingredients and substances contained therein, which said statement was false and misleading, each of the packages being labeled as follows: "Fruit Flavored Puddine, Rose Vanilla," whereas, in truth and in fact, the said puddine did not contain vanilla.

On March 26, 1914, the defendant company entered a plea of guilty to the first, second, third, fourth, sixth, seventh, eighth, and ninth counts of the information, and the court imposed a fine of $40. The fifth and tenth counts of the information were nolle-prossed.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3426. Misbranding of imitation lemon flavoring. U. S. v. Fruit Puddine Co. Plea of guilty. Fine, $5.** (F. & D. No. 2371. I. S. No. 11019-c.)

On November 4, 1912, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Fruit Puddine Co., a body corporate, Baltimore, Md., alleging shipment by said company in violation of the Food and Drugs Act, on July 6, 1910, from the State of Maryland into the State of Ohio, of a quantity of imitation lemon flavoring which was misbranded. The product was labeled: "Elk Brand Imitation Lemon Flavoring. Color combination of permitted coal tar dyes described in U. S. Dept. Agriculture. Oil Lemon .75% Alcohol 33% Water 66.25% Color Q.S. Manufactured by Clotworthy Chemical Co., Baltimore, Md."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results: Lemon oil, none; citral, 0.10 per cent; ethyl alcohol, 31.98 per cent; an unpermitted coal tar color with reactions of Tartrazine, S & J 94.

Misbranding of the product was alleged in the information for the reason that each of the packages containing the same bore a statement, in substance and effect, that said article of food contained 75/100 of 1 per cent oil of lemon,

which said statement was false and misleading, in that said article of food did not contain 75/100 of 1 per cent oil of lemon, but, as a matter of fact, contained no oil of lemon whatever. Misbranding was alleged for the further reason that each of the packages containing the product was labeled and branded so as to deceive and mislead the purchaser, in that it was stated upon each of said packages in substance and effect that said article of food contained 75/100 of 1 per cent oil of lemon, whereas, in truth and in fact, the said article of food did not contain 75/100 of 1 per cent oil of lemon.

On March 26, 1914, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $5.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3427. Misbranding of cheese. U. S. v. 30 Boxes or Packages of Cheese. Order of court releasing product on bond.** (F. & D. No. 3121. S. No. 1138.)

On October 31, 1911, the United States attorney for the Southern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 30 boxes or packages of cheese remaining unsold in the original unbroken packages and in possession of Sehon, Stevenson & Co., a corporation, Huntington, W. Va., alleging that the article had been transported from the State of Ohio into the State of West Virginia, and charging misbranding in violation of the Food and Drugs Act. The boxes were labeled, "Crosby & Meyers, Cincinnati, Ohio," and all the boxes bore figures indicating the weight corresponding to the amount entered in the invoice.

It was alleged in the libel that the product was misbranded and liable to condemnation and confiscable for the reason that said boxes or packages did not contain as many pounds of food or cheese as they purported to contain as evidenced by the weight markings on the outside of said boxes or packages, but contained fewer pounds of cheese than marked on the outside of said boxes or packages, and [said marks] were misleading and false so as to deceive and mislead the purchaser and [constituted] a misbranding within the meaning of the act.

On November 11, 1911, the said Sehon, Stevenson & Co., claimant, filed, in conformity with an order of court theretofore entered, its bond in the sum of $200, in conformity with section 10 of the act, for the release of the goods, conditioned that said claimant should pay the costs of the proceedings and obliterate the old brands on the boxes of cheese and rebrand the same, stating on said boxes the actual weight of the cheese therein.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3428. Misbranding of fruit puddine. U. S. v. Fruit Puddine Co. Plea of guilty. Fine, $50.** (F. & D. No. 3992. I. S. No. 926-d.)

On July 18, 1913, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Fruit Puddine Co. (Inc.), a body corporate, Baltimore, Md., alleging shipment by said company, in violation of the Food and Drugs Act, on May 8, 1911, from the State of Maryland into the State of Ohio, of a quantity of a certain article of food called "Fruit Puddine, Lemon," which was misbranded. The product was labeled: (On shipping case) "2 doz. Pkgs. Fruit Puddine Trade Mark Registered A Compound (Picture of bowl of fruit) Fruit Puddine Co., Baltimore,

Md. U. S. A." (On package) "Fruit Flavored Puddine Lemon Fruit Puddine Co., Baltimore, Md. U. S. A. Fruit Puddine (Picture of bowl of fruit) A mixture. The flavorings and colors used in the Mixture Fruit Puddine are pure and harmless, and are guaranteed by the Fruit Puddine Co. to comply with the Pure Food and Drugs Act, under Serial No. 4167."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Reducing sugars: None. | |
| Ether extract (per cent) | 0.05 |
| Taste: Like lemon. | |
| Starch (McGill method) (per cent) | 86.5 |
| Starch (acid conversion) (per cent) | 80.3 |
| Moisture (per cent) | 7.99 |
| Ash (per cent) | 1.31 |
| Alkalinity of ash (cc N/10 acid per 100 grams) | 6.0 |
| Sodium chlorid (NaCl) (per cent) | 1.23 |
| Phosphoric acid ($P_2O_5$): Slight trace. | |
| Protein (per cent) | 0.47 |
| Color: Naphthol Yellow S. | |

Misbranding of the product was alleged in the information for the reason that each of the packages containing said puddine bore a certain statement regarding it and the ingredients and substances contained therein, which said statement was false and misleading in that it was stated upon each of the packages that said puddine was a fruit-flavored puddine, which statement was false and misleading, in that said puddine was not a fruit-flavored puddine, but, on the contrary, was a puddine flavored with ordinary flavoring materials prepared from essential oils. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser, in that each of the packages bore a certain statement regarding said puddine and the ingredients and substances contained therein, which said statement was false and misleading, in that each of the packages was labeled "Fruit Flavored Puddine," whereas, in truth and in fact, said puddine did not contain any fruit flavor, but, on the contrary, was flavored with ordinary flavoring materials prepared from essential oils. Misbranding was alleged for the further reason that each of the packages bore a certain design regarding said article and the ingredients and substances contained therein, to wit, a dish of fruit, and in that each of said packages bore, in addition, a certain statement regarding the said article and said ingredients and substances, which said statement was in substance and effect that the said puddine was a fruit-flavored puddine flavored with a lemon flavor, which said design and which said statement were false and misleading, in that they imported that said puddine contained fruit flavors, whereas, in truth and in fact, the said puddine did not contain any fruit flavors, but, on the contrary, contained merely ordinary flavoring material prepared from essential oils. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser, in that each of the packages bore a certain design regarding the said puddine and the ingredients and substances contained therein, to wit, a dish of fruit, and in that each of said packages bore in addition a certain statement regarding said puddine and said ingredients and substances, which said statement was in effect and substance that said puddine was a fruit-flavored puddine, lemon, which said design and statement were false and misleading in that they imported that said puddine contained a fruit flavor, whereas, in truth and in fact, said puddine did not contain any fruit

flavor, but, on the contrary, contained merely ordinary flavoring material prepared from essential oils.

On March 26, 1914, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3429. Misbranding of jellies and preserves. U. S. v. National Pickle & Canning Co. Plea of guilty. Fine, $140.** (F. & D. No. 4203. I. S. Nos. 476-d, 477-d, 478-d, 479-d, 480-d, 481-d, 482-d.)

On June 13, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Pickle & Canning Co., a corporation, St. Louis, Mo., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about June 10, 1911, from the State of Missouri into the State of Colorado, of quantities of jellies and preserves which were adulterated and misbranded.

One of the jelly products was labeled: "Pure Fruit Jelly—Cupid Brand The Juice of Apples Granulated Sugar Packed and Guaranteed by National Pickle & Canning Co. Dodson-Braun Branch St. Louis, Mo." Analysis of a sample of this product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Solids by drying (per cent) | 76.14 |
| Nonsugar solids (per cent) | 1.06 |
| Sucrose by Clerget (per cent) | 56.00 |
| Reducing sugars as invert before inversion (per cent) | 19.08 |
| Commercial glucose (factor 163): None. | |
| Polarization, direct, at 20° C. (°V.) | +52.00 |
| Polarization, invert, at 22.5° C. (°V.) | −21.60 |
| Polarization, invert, at 87° C. (°V.) | −1.20 |
| Ash (per cent) | 0.46 |
| Alkalinity of ash (cc N/10 acid per 100 grams) | 51 |
| Acids (cc N/10 alkali per 100 grams) | 72 |
| $P_2O_5$ (determined in ash) (per cent) | 0.16 |
| $P_2O_5$ (percentage in ash) | 34.8 |
| $As_2O_3$ (mg per kilo) | 0.1 |

Another product was labeled: "Pure Fruit Jelly—Cupid Brand The Juice of Apples—Blackberries Granulated Sugar—Packed and Guaranteed by National Pickle & Canning Co. Dodson-Braun Branch St. Louis, Mo." Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Solids by drying (per cent) | 76.00 |
| Nonsugar solids (per cent) | 4.60 |
| Sucrose by Clerget (per cent) | 46.83 |
| Reducing sugars as invert before inversion (per cent) | 24.57 |
| Commercial glucose: None. | |
| Polarization, direct, at 20° C. (°V.) | +39.20 |
| Polarization, invert, at 24° C. (°V.) | −22.00 |
| Polarization, invert, at 87° C. (°V.) | −1.60 |
| Ash (per cent) | 0.45 |
| Alkalinity of ash (cc N/10 acid per 100 grams) | 47 |
| Acids (cc N/10 alkali per 100 grams) | 87 |

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|---|---|
| $P_2O_5$ (determined in ash) (per cent) | 0.17 |
| $P_2O_5$ (percentage in ash) | 37.4 |
| $As_2O_5$ (mg per kilo) | 0.38 |

Another product was labeled: "Pure Fruit Jelly—Cupid Brand The Juice of Apples—Raspberries Granulated Sugar Packed and Guaranteed by National Pickle & Canning Co. Dodson-Braun Branch St. Louis, Mo." Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Solids by drying (per cent) | 77.80 |
| Nonsugar solids (per cent) | 5.02 |
| Sucrose by Clerget (per cent) | 58.40 |
| Reducing sugars as invert before inversion (per cent) | 14.38 |
| Commercial glucose: None. | |
| Polarization, direct, at 20° C. (°V.) | +52.60 |
| Polarization, invert, at 23° C. (°V.) | −24.0 |
| Polarization, invert, at 87° C. (°V.) | −0.80 |
| Ash (per cent) | 0.50 |
| Alkalinity of ash (cc N/10 acid per 100 grams) | 54 |
| Acids (cc N/10 alkali per 100 grams) | 74 |
| $P_2O_5$ (determined in ash) (per cent) | 0.18 |
| $P_2O_5$ (percentage in ash) | 35.6 |
| $As_2O_3$ (mg per kilo) | 0.38 |

Another product was labeled: "Pure Fruit Jelly—Cupid Brand The Juice of Apples Currants Granulated Sugar Packed and Guaranteed by National Pickle & Canning Co. Dodson-Braun Branch St. Louis, Mo." Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Solids by drying (per cent) | 77.46 |
| Nonsugar solids (per cent) | 3.31 |
| Sucrose by Clerget (per cent) | 48.06 |
| Reducing sugars as invert before inversion (per cent) | 26.09 |
| Commercial glucose: None. | |
| Polarization, direct, at 20° C. (°V.) | +38.00 |
| Polarization, invert, at 24° C. (°V.) | −24.80 |
| Polarization, invert, at 87° C. (°V) | — 2.00 |
| Ash (per cent) | 0.46 |
| Alkalinity of ash (cc N/10 acid per 100 grams) | 48 |
| Acids (cc N/10 alkali per 100 grams) | 99 |
| $P_2O_5$ (determined in ash) (per cent) | 0.16 |
| $P_2O_5$ (percentage in ash) | 35.5 |
| $As_2O_3$ (mg per kilo) | 0.1 |

Adulteration of the foregoing products was alleged in the information for the reason that jelly containing added phosphoric acid had been mixed and packed with said articles and products so as to, and it did, reduce, lower, and injuriously affect the quality and strength of said articles and products; and, further, in this, that jelly containing added phosphoric acid had been substituted wholly or in part for the pure fruit jellies which the said articles then and there purported to be. Misbranding of the products was alleged in the information for the reason that said statement on the labels aforesaid, to wit, "Pure Fruit Jelly," was false and misleading for the reason that it conveyed the impression that said products were prepared from the fruits named on said labels, together with other normal ingredients of fruit jellies, whereas, in truth and in fact,

said products were mixtures of said fruit jellies and added phosphoric acid, which last-named substance is not a normal ingredient of fruit jelly; and that said products were further misbranded in that they were labeled and branded so as to mislead and deceive the purchaser thereof into believing that they were pure fruit jellies, prepared only from fruit and other normal ingredients of said jellies, whereas, in truth and in fact, said products were prepared in part with added phosphoric acid and contained added phosphoric acid, which is not a normal ingredient of fruit jellies.

The first sample of preserves was labeled: "Red Raspberry Preserves—Contains 1/1000 Part Sodium Benzoate—Guaranteed by National Pickle & Canning Co., Dodson-Braun Branch—St. Louis, Mo." On cap: "Cupid Brand." Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Solids by drying (per cent) | 78.46 |
| Nonsugar solids (per cent) | 6.14 |
| Sucrose by Clerget (per cent) | 19.58 |
| Reducing sugars as invert before inversion (per cent) | 52.74 |
| Commercial glucose: None. | |
| Polarization, direct, at 22° C. (°V.) | + 5.40 |
| Polarization, invert, at 24° C. (°V.) | —20.00 |
| Polarization, invert, at 87° C. (°V.) | — 1.60 |
| Ash (per cent) | 0.27 |
| Alkalinity of ash (cc N/10 acid per 100 grams) | 25 |
| Acids (cc N/10 alkali per 100 grams) | 70 |
| $P_2O_5$ (determined in ash) (per cent) | 0.07 |
| $P_2O_5$ (percentage in ash) | 26.60 |
| $As_2O_3$ (mg per kilo) | 1 |
| Sodium benzoate (per cent) | 0.09 |

Another sample was labeled: "Strawberry Preserves—Contains Sodium Benzoate—National Pickle & Canning Co., Dodson-Braun Branch—St. Louis, Mo." On cap: "Cupid Brand." Analysis of this product by said Bureau of Chemistry showed the following results:

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|---|---|
| Solids by drying (per cent) | 78.78 |
| Nonsugar solids (per cent) | 5.12 |
| Sucrose by Clerget (per cent) | 22.34 |
| Reducing sugars as invert before inversion (per cent) | 51.32 |
| Commercial glucose: None. | |
| Polarization, direct, at 22° C. (°V.) | + 9.20 |
| Polarization, invert, at 24° C. (°V.) | —20.00 |
| Polarization, invert, at 87° C. (°V.) | — 1.20 |
| Ash (per cent) | 0.38 |
| Alkalinity of ash (cc N/10 acid per 100 grams) | 49 |
| Acids (cc N/10 alkali per 100 grams) | 79 |
| $P_2O_5$ (determined in ash) (per cent) | 0.11 |
| $P_2O_5$ (percentage in ash) | 28.4 |
| $As_2O_3$ (mg per kilo) | 0.2 |
| Sodium benzoate (per cent) | 0.07 |

Another sample was labeled: "Blackberry Preserves—Contains Sodium Benzoate—National Pickle & Canning Co., Dodson-Braun Branch—St. Louis, Mo." On cap: "Cupid Brand." Analysis of this sample by said Bureau of Chemistry showed the following results:

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|---|---|
| Solids by drying (per cent) | 78.26 |
| Nonsugar solids (per cent) | 10.11 |

| | |
|---|---|
| Sucrose by Clerget (per cent) | 10.29 |
| Reducing sugars as invert before inversion (per cent) | 57.86 |
| Commercial glucose: None. | |
| Polarization, direct, at 20° C. (°V.) | — 5.4 |
| Polarization, invert, at 23° C. (°V.) | —18.8 |
| Polarization, invert, at 87° C. (°V.) | — 1.2 |
| Ash (per cent) | 0.46 |
| Alkalinity of ash (cc N/10 acid per 100 grams) | 60 |
| Acids (cc N/10 alkali per 100 grams) | 93 |
| $P_2O_5$ (determined in ash) (per cent) | 0.13 |
| $P_2O_5$ (percentage in ash) | 29.3 |
| $As_2O_3$ (mg per kilo) | 0.4 |
| Sodium benzoate (per cent) | 0.08 |

Adulteration of the three samples of preserves was alleged in the information for the reason that preserves containing added phosphoric acid had been mixed and packed with said articles and products so as to, and it did, reduce, lower, and injuriously affect the quality and strength of said articles and products; and, further, in this, that preserves containing added phosphoric acid had been substituted wholly or in part for the pure fruit preserves which the said articles purported to be.

Misbranding of the first sample of preserves referred to was alleged in the information for the reason that said statement on the label aforesaid, to wit, "Red Raspberry Preserves," was false and misleading for the reason that it conveyed the impression that said product was prepared from the fruit named on said label, together with other normal ingredients of fruit preserves, whereas in truth and in fact said product was a mixture of said fruit preserves and added phosphoric acid which last-named substance is not a normal ingredient of fruit preserves; and that said product was further misbranded in that it was labeled and branded so as to mislead and deceive the purchaser thereof into believing that it was pure fruit preserves, prepared only from fruit and other normal ingredients of said preserves, whereas in truth and in fact said product was prepared in part with added phosphoric acid and contained added phosphoric acid, which is not a normal ingredient of fruit preserves.

Misbranding of the two samples of preserves last referred to was alleged in the information for the reason that the statements on the labels aforesaid, to wit, "Strawberry Preserves" and "Blackberry Preserves," respectively, were false and misleading for the reason that they conveyed the impression that said products were prepared, respectively, from the fruits named on said labels, together with other normal ingredients of fruit preserves, whereas in truth and in fact said products were mixtures of said fruit preserves and added phosphoric acid, which last-named substance is not a normal ingredient of fruit preserves; and that said products were further misbranded in that they were labeled and branded so as to mislead and deceive the purchaser thereof into believing that said products were pure fruit preserves, prepared only from fruit and other normal ingredients of said preserves, whereas in truth and in fact said products were prepared in part with added phosphoric acid and contained added phosphoric acid, which is not a normal ingredient of fruit preserves; and that said products were further misbranded under the terms of Food Inspection Decision 104, which decision was duly adopted and promulgated long before the date of said shipment by the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor of the United States, under the authority given them to make rules and regulations for the enforcement of said Food and Drugs Act, and which decision provides that no objection will be raised under the Food and Drugs Act to the use in food of benzoate of soda,

provided that each container or package of said food is plainly labeled to show the presence and amount of benzoate of soda; and that said preserves contained benzoate of soda, but the amount of said benzoate of soda contained therein was not declared on said labels on said products.

On May 13, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $140.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, *D. C., September 24, 1914.*

**3430. Adulteration and misbranding of whisky. U. S. v. Pure Food Distilling Co. Plea of guilty. Fine, $50 and costs.** (F. & D. No. 4604. I. S. No. 17379-d.)

On November 5, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Pure Food Distilling Co., a corporation, St. Louis, Mo., alleging shipment by said company in violation of the Food and Drugs Act, on or about April 10, 1912, from the State of Missouri into the State of Illinois, of a quantity of whisky, which was adulterated and misbranded. The product was labeled: (On seal over cork) "Absolutely Pure Pure Food Distilling Company Guaranteed under the National Pure Food Law June 1906." (Main label) "Family Trade Whiskey—A pure straight whiskey—No blend No compound No imitation—Pure Food Distilling Co. St. Louis, Missouri."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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|---|---|
| Proof | 67.8 |
| Solids (grams per 100 liters, 100° proof) | 558.7 |
| Acids (grams per 100 liters, 100° proof) | 19 |
| Esters (grams per 100 liters, 100° proof) | 5 |
| Aldehydes (grams per 100 liters, 100° proof) | 0 |
| Furfural (grams per 100 liters, 100° proof) | 0.14 |
| Fusel oil (grams per 100 liters, 100° proof) | 26 |
| Total color (degrees Lovibond, 0.5 inch cell, to 100° proof) | 21.3 |
| Color insoluble in amyl alcohol (per cent) | 88 |
| Color insoluble in water (per cent) | 0 |

Adulteration of the product was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed with it so as to reduce and lower and injuriously affect its quality and strength; and further in that a substance, to wit, water, had been substituted in part for the said article and product. Misbranding was alleged for the reason that the statement "A pure straight whiskey," borne on the label on said package as aforesaid in which it was offered for sale and shipped, was false and misleading because of the fact that said product was not when so shipped pure straight whisky, but was an article consisting of neutral spirits or redistilled spirits artificially colored and reduced with water to 67.8 degrees proof; and said product was further misbranded in that it was labeled and branded so as to deceive and mislead the purchaser, in that it was labeled and branded as a pure straight whisky, whereas, in truth and in fact, said product was not a pure straight whisky, but was a mixture of neutral spirits or redistilled spirits and water, reduced to a much lower proof than pure straight whisky.

On July 7, 1914, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50 and costs.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3431. Adulteration and misbranding of whisky. U. S. v. Pure Food Distilling Co. Plea of guilty. Fine, $50 and costs.** (F. & D. No. 4668. I. S. No. 17380-d.)

On April 21, 1914, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Pure Food Distilling Co., a corporation, St. Louis, Mo., alleging shipment by said company in violation of the Food and Drugs Act, on or about April 10, 1912, from the State of Missouri into the State of Illinois, of a quantity of whisky which was adulterated and misbranded. The product was labeled: "Absolutely Pure Pure Food Distilling Company Guaranteed under the National Pure Food Law, June 30, 1906." "Old Ancestry Whiskey A Pure Straight Whiskey No Blend No Compound No Imitation Pure Food Distilling Co. St. Louis, Mo."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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|---|---|
| Proof | 75.5 |
| Solids (grams per 100 liters, 100° proof) | 647.4 |
| Acids (grams per 100 liters, 100° proof) | 23 |
| Esters (grams per 100 liters, 100° proof) | 15.8 |
| Aldehydes (grams per 100 liters, 100° proof) | 2 |
| Furfural (grams per 100 liters, 100° proof) | 0.13 |
| Fusel oil (grams per 100 liters, 100° proof) | 37 |
| Total color (degrees Lovibond, 0.5 inch cell, to 100° proof) | 21 |
| Color insoluble in amyl alcohol (per cent) | 72 |
| Color insoluble in water (per cent) | 0 |

Adulteration of the product was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed with it so as to reduce and lower and injuriously affect its quality and strength; and further in that a substance, to wit, water, had been substituted wholly or in large part for the article whisky.

Misbranding was alleged for the reason that the statement "A Pure Straight Whiskey," borne on the label as aforesaid, was false and misleading, because it misled and deceived the purchaser into the belief that said product was a pure straight whisky, whereas, in truth and in fact, it was not a pure straight whisky, but was an article consisting of neutral spirits or redistilled spirits artificially colored and reduced with water to 75.5° proof; and said article was further misbranded in that it was labeled and branded so as to mislead and deceive the purchaser, being labeled and branded "A Pure Straight Whiskey," whereas, in truth and in fact, said product was not a pure straight whisky, but was a mixture of neutral spirits or redistilled spirits and water reduced to a much lower proof than pure straight whisky.

On July 7, 1914, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3432. Adulteration and misbranding of so-called apple brandy and so-called peach brandy. U. S. v. Kellerstrass Distilling Co. Plea of guilty. Fine, $100 and costs.** (F. & D. No. 4764. I. S. Nos. 16189-d, 16191-d.)

On December 11, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against

the Kellerstrass Distilling Co., a corporation, St. Louis, Mo., alleging shipment by said company in violation of the Food and Drugs Act, on or about March 28, 1912, from the State of Missouri into the State of Indiana, of a quantity of so-called apple brandy and peach brandy, which were adulterated and misbranded. The apple brandy was labeled: "Family Trade Apple Brandy Compounded with Pure Grain Distillates Artificially colored and flavored Kellerstrass, St. Louis, Mo."

Analysis of a sample of this product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Extract (grams per 100 cc) | 0.54 |
| Alcohol (per cent by volume) | 36.48 |
| Aldehydes (grams per 100 liters, 100° proof) | 1.4 |
| Fusel oil (grams per 100 liters, 100° proof) | 22.3 |
| Ash (grams per 100 cc) | 0.013 |
| Furfural (grams per 100 liters, 100° proof) | 0.55 |
| Total acids as acetic (grams per 100 liters, 100° proof) | 23.0 |
| Volatile acids as acetic (grams per 100 liters, 100° proof) | 8.0 |
| Esters as ethyl acetate (grams per 100 liters, 100° proof) | 14.7 |
| Color insoluble in amyl alcohol (per cent) | 80 |

Adulteration of the product was alleged in the information for the reason that water and neutral spirits derived from a source other than apples, which had been artificially colored and flavored, had been mixed and packed with said product in such a manner as to reduce and lower and injuriously affect its quality and strength; and, further, in that water and neutral spirits, derived from a source other than apples, had been substituted wholly or in large part for the genuine article. Misbranding was alleged for the reason that said statement, "Apple Brandy," borne on the label as aforesaid, was false and misleading, because it created the impression that said product was pure apple brandy, when, in truth and in fact, it was not such, but was a product to which water and neutral spirits from a source other than the apple, which had been artificially colored and flavored, had been added; and said statement "Compounded with pure grain distillates artificially colored and flavored," which also appeared on said label, was in small and inconspicuous type and was insufficient to correct or overcome the false impression so created by the said statement "Apple Brandy"; and said product was further misbranded in that it was labeled and branded so as to mislead and deceive the purchaser, being labeled "Apple Brandy," thereby creating the impression that said product was pure apple brandy, when, in truth and in fact, it was not such, but was a product to which water and neutral spirits from a source other than the apple, which had been artificially colored and flavored, had been added, and said statement "Compounded with pure grain distillates artificially colored and flavored," which also appeared on said label, was in small and inconspicuous type and was insufficient to correct the false impression made by the statement "Apple Brandy," which was in large type.

The peach brandy was labeled: "Family Trade Peach Brandy Compounded with Pure Grain Distillates Artificially colored and flavored Kellerstrass, St. Louis, Mo."

Analysis of a sample of this product by the said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Extract (grams per 100 cc) | 0.74 |
| Alcohol (per cent by volume) | 37.97 |
| Aldehydes (grams per 100 liters, 100° proof) | 3.0 |

| | |
|---|---|
| Fusel oil (grams per 100 liters, 100° proof) | 23.7 |
| Ash (grams per 100 cc) | 0.016 |
| Furfural (grams per 100 liters, 100° proof) | 0.26 |
| Total acids as acetic (grams per 100 liters, 100° proof) | 23.7 |
| Volatile acids as acetic (grams per 100 liters, 100° proof) | 5.5 |
| Esters as ethyl acetate (grams per 100 liters, 100° proof) | 8.0 |
| Color insoluble in amyl alcohol (per cent) | 83 |

Adulteration of the product was alleged in the information for the reason that water and neutral spirits derived from a source other than peaches, which had been artificially colored and flavored, had been mixed and packed with said product in such a manner as to reduce and lower and injuriously affect its quality and strength; and, further, in that water and neutral spirits from a source other than peaches, which had been artificially colored and flavored, had been substituted wholly or in large part for the genuine article, to wit, peach brandy.

Misbranding was alleged for the reason that said statement "Peach Brandy," so borne on the label as aforesaid, was false and misleading, because it created the impression that said product was pure peach brandy, when, in truth and in fact, it was not pure peach brandy, but was a product to which water and neutral spirits derived from a source other than the peach, which had been artificially colored and flavored, had been added; and said statement "Compounded with pure grain distillates artificially colored and flavored," which also appeared on said label, was in small and inconspicuous type and was insufficient to correct the impression created by the statement "Peach Brandy"; and said product was further misbranded in that it was labeled and branded so as to mislead and deceive the purchaser, being labeled "Peach Brandy," thereby creating the impression that said product was pure peach brandy, when, in truth and in fact, it was not pure peach brandy, but was a product to which water and neutral spirits from a source other than the peach, which had been artificially colored and flavored, had been added, and the said statement "Compounded with pure grain distillates artificially colored and flavored," which also appeared on said label as aforesaid, was in small and inconspicuous type and was insufficient to correct and overcome the false impression created by the said statement "Peach Brandy."

On July 7, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $100 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3433. Adulteration and misbranding of soluble lemon flavor. U. S. v. West India Manufacturing Co., a corporation. Plea of guilty. Fine, $20 and costs.** (F. & D. No. 5053. I. S. No. 36740-e.)

On April 21, 1914, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the West India Manufacturing Co., a corporation, St. Louis, Mo., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about July 1, 1912, from the State of Missouri into the State of Georgia, of a quantity of soluble lemon flavor which was adulterated and misbranded. The product was labeled: "Soluble Lemon Flavor. Directions * * No. 3828 * * * The West India Mfg. Co. St. Louis, Mo."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Lemon oil by polarization: None.
Lemon oil by precipitation: Trace.
Aldehydes as citral (Chace) (per cent)---------- 0.10
Color: No coal tar; appears natural.

Adulteration of the product was alleged in the information for the reason that another substance, to wit, a dilute terpeneless extract of lemon, had been mixed and packed with it in such a manner as to reduce and lower and injuriously affect its quality and strength, and, further, in that a substance, to wit, a dilute terpeneless extract of lemon, had been substituted wholly or in large part for the genuine article. Misbranding was alleged for the reason that said statement, "Soluble Lemon Flavor," borne on the label as aforesaid, was false and misleading, because it conveyed the impression that said product was soluble lemon flavor when, in truth and in fact, it was not a soluble lemon flavor, but was a dilute terpeneless extract of lemon, and that said product was further misbranded in that it was labeled and branded so as to mislead and deceive the purchaser, being labeled "Soluble Lemon Flavor," when, in truth and in fact, said product was not soluble lemon flavor, but was a dilute terpeneless extract of lemon.

On June 13, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $20 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3434. Adulteration and misbranding of wines (sauterne). U. S. v. Theodore Netter. Plea of guilty. Fine, $25 and costs.** (F. & D. No. 5155. I. S. No. 37204-e.)

On May 2, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Theodore Netter, Chicago, Ill., alleging shipment by said defendant in violation of the Food and Drugs Act, on June 29 and July 14, 1912, from the State of Illinois into the State of Wisconsin, of two consignments of sauterne wine which was adulterated and misbranded.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Specific gravity, 15.6° C./15.6° C | 1.0132 |
| Alcohol (per cent by volume) | 11.63 |
| Glycerol (grams per 100 cc) | 0.42 |
| Solids (grams per 100 cc) | 7.07 |
| Nonsugar solids (grams per 100 cc) | 2.13 |
| Sucrose by Clerget (grams per 100 cc) | 0.08 |
| Reducing sugar, invert (grams per 100 cc) | 4.86 |
| Polarization, direct, at 22° C. (°V.) | —0.3 |
| Polarization, invert, at 22° C. (°V.) | —0.4 |
| Polarization, invert, at 87° C. (°V.) | 1.0 |
| Ash (grams per 100 cc) | 0.196 |
| Soluble phosphoric acid (mg per 100 cc) | 11.7 |
| Sulphates as $K_2SO_4$ (grams per 100 cc) | 0.084 |
| Acid, as tartaric (grams per 100 cc) | 0.628 |
| Volatile acid, as acetic (grams per 100 cc) | 0.104 |

Color: Natural.
Sulphurous acid: None.

A carbonated white wine of domestic origin; not a sauterne type and not extra dry.

Adulteration of the product was alleged in the information for the reason that a domestic white wine, artificially carbonated and not extra dry, had been substituted wholly for genuine sauterne wine, and for the further reason that a domestic white wine, artificially carbonated and not extra dry, had been substituted in part for genuine sauterne wine. Misbranding was alleged in the information for the reason that in each consignment the cases, drums, and bottles containing the article of food bore a label in words and figures as follows, to wit: (On cases and drums) "Sauterne Extra Dry 50 ¼ bottles Sparkling Wine Extra Dry." (On bottles) "Sparkling Carbonated Wine Extra Dry Sauterne Type Herman Toser Company, Milwaukee, Wis. Extra T. N. Dry," which said statement appearing on the label on each of the bottles, drums, and cases was false and misleading in that the statement "Sparkling Wine" and "Extra Dry Sauterne" represented to the purchaser that the article of food aforesaid was genuine sauterne wine, whereas, in truth and in fact, the article of food aforesaid was not a genuine sauterne wine, but a domestic white wine, artificially carbonated and not extra dry; and for the further reason that said statement appearing on the labels misled and deceived the purchaser in that the statement "Sparkling Wine" and "Extra Dry Sauterne" represented to the purchaser that the article of food aforesaid was genuine sauterne wine, whereas, in truth and in fact, it was not a genuine sauterne wine, but a domestic white wine, artificially carbonated and not extra dry.

On May 9, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $25 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3435. Adulteration and misbranding of wine. U. S. v. Theodore Netter (Teonet & Co.). Plea of guilty. Fine, $25 and costs.** (F. & D. No. 5165. I. S. No. 37205-e.)

On May 2, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Theodore Netter, doing business as Teonet & Co., Chicago, Ill., alleging shipment by said defendant in violation of the Food and Drugs Act, on May 13, 1912, from the State of Illinois into the State of Wisconsin, of a quantity of wine which was adulterated and misbranded.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that it was a carbonated wine of domestic origin, not extra dry.

Adulteration of the product was alleged in the information for the reason that an artificially carbonated wine, not extra dry, had been substituted wholly for genuine extra dry sparkling wine; and for the further reason that an artificially carbonated wine, not extra dry, had been substituted in part for genuine extra dry sparkling wine. Misbranding was alleged for the reason that each of the bottles containing the article of food, and each of the cases bore a label in words and figures as follows, to wit: (On shipping case) "White Pearl Extra Dry 50 ¼ bottles Sparkling Wines Extra Dry." (On bottles) "Extra T. N. Dry. Extra Dry Sparkling Wine Serial No. 16477 White Pearl Teonet & Co., Chicago," which said statement appearing on the label on each of the bottles and cases was false and misleading in that the statement "Extra

Dry Sparkling Wine" represented to the purchaser that the article of food aforesaid was genuine extra dry sparkling wine, whereas, in truth and in fact, each of the bottles did not contain genuine extra dry sparkling wine, but contained an artificially carbonated wine, not extra dry; and for the further reason that said statement appearing on the label on each of the bottles and cases misled and deceived the purchaser, in that the statement "Extra Dry Sparkling Wine" represented to the purchaser that the article of food aforesaid was genuine extra dry sparkling wine, whereas, in truth and in fact, each of the bottles aforesaid did not contain genuine extra dry sparkling wine, but contained an artificially carbonated wine, not extra dry.

On May 9, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $25 and costs.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3436. Adulteration and misbranding of beer. U. S. v. Obermeyer & Liebmann. Plea of guilty to counts 1, 2, and 3 of information. Fine, $25. Counts 4 and 5 nolle prossed.** (F. & D. No. 5173. I. S. No. 1154-e.)

On January 20, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in five counts against Obermeyer & Liebmann, a corporation, New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act on October 14, 1912, from the State of New York into the State of Connecticut, of a quantity of beer which was adulterated and misbranded. The product was labeled "Pilsener Style Beer Registered Trade Mark Brewed from choice Malt and fine Hops By Obermeyer & Liebmann Bottled at the Brewery. New York City." (Neck label) "Obermeyer & Liebmann."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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|---|---|
| Alcohol (per cent by volume) | 4.50 |
| Extract (per cent) | 5.62 |
| Extract, original wort (per cent) | 12.82 |
| Degree fermentation | 56.16 |
| Volatile acid, as acetic (grams per 100 cc) | 0.014 |
| Total acid, as lactic (grams per 100 cc) | 0.189 |
| Maltose (per cent) | 1.88 |
| Dextrin (per cent) | 2.69 |
| Ash (per cent) | 0.158 |
| Protein (per cent) | 0.352 |
| $P_2O_5$ (per cent) | 0.043 |
| Undetermined (per cent) | 0.54 |
| Polarization (°V.) | +41 |
| Color (degrees, ¼-inch cell, Lovibond) | 3 |

Adulteration of the product was alleged in the first count of the information for the reason that a beer made from barley malt, hops, and some other cereal or cereal product, had been substituted for a beer made exclusively from barley malt and hops which the article purported to be. Misbranding was alleged in the second count of the information for the reason that the statement "Brewed from choice Malt and fine Hops," borne on the label, was false and misleading in that it conveyed the impression that the product aforesaid had been brewed exclusively from barley malt and hops, whereas, in truth and in fact, the said

product had been brewed from barley malt, hops, and some other cereal or cereal product. Misbranding was alleged in the third count of the information for the reason that the product was labeled and branded so as to deceive and mislead the purchaser, being labeled "Brewed from choice Malt and fine Hops," thereby creating the impression that the product had been brewed from barley malt and hops exclusively, whereas, in truth and in fact, said product was not brewed exclusively from barley malt and hops, but from barley malt, hops, and some other cereal or cereal product. Misbranding was alleged in the fourth count of the information for the reason that the statement "Pilsener Style Beer," borne on the label, was false and misleading, in that it conveyed the impression that the product was a beer of the style of that brewed in Pilsen, Bohemia, exclusively from barley malt and hops, whereas, in truth and in fact, it was not that style of beer, but a beer brewed from barley malt, hops, and some other cereal or cereal product. Misbranding was alleged in the fifth count of the information for the reason that the article was labeled and branded so as to deceive and mislead the purchaser, being labeled and branded "Pilsener Style Beer," thereby creating the impression that the product was a beer of the style of that brewed in Pilsen, Bohemia, exclusively from barley malt and hops, whereas, in truth and in fact, it was not that style of beer, but a beer brewed from barley malt, hops, and some other cereal or cereal product.

On April 14, 1914, the defendant company withdrew its plea of not guilty formerly made and entered a plea of guilty to the first three counts of the information, and the court imposed a fine of $25. The fourth and fifth counts of the information were nolle prossed.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3437. Adulteration and misbranding of beer. U. S. v. Obermeyer & Liebmann. Plea of guilty to counts 1, 2, and 3 of information. Fine, $25. Counts 4 and 5 of information nol-prossed.** (F. & D. No. 5177. I. S. No. 1156-e.)

On January 20, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in five counts against Obermeyer & Liebmann, a corporation, New York, N. Y., alleging shipment by said defendant on October 15, 1912, from the State of New York into the State of Connecticut, of a quantity of beer which was adulterated and misbranded. The product was labeled: "Pilsener Style Beer Registered Trade Mark Brewed from choice Malt and fine Hops By Obermeyer & Liebmann Bottled at the Brewery. New York City." (Neck label) "Obermeyer & Liebmann."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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|---|---|
| Specific gravity | 1.0147 |
| Alcohol (per cent by volume) | 4.45 |
| Extract (per cent by weight) | 5.48 |
| Extract, original wort (per cent by weight) | 12.60 |
| Degree fermentation (per cent) | 56.51 |
| Volatile acid as acetic (grams per 100 cc) | 0.014 |
| Total acid as lactic (grams per 100 cc) | 0.158 |
| Maltose (per cent) | 1.68 |
| Dextrin (per cent) | 2.71 |

| | |
|---|---|
| Ash (per cent) | 0.154 |
| Protein (per cent) | 0.342 |
| $P_2O_5$ (per cent) | 0.041 |
| Undetermined (per cent) | 0.60 |
| Polarization, undiluted (°V.) | +40.8 |
| Color (degrees, ¼-inch cell) | 3 |

Not an all-malt product.

Adulteration of the product was alleged in the first count of the information, for the reason that a beer made from barley malt, hops, and some other cereal or cereal product had been substituted for a beer made exclusively from barley malt and hops which the article purported to be. Misbranding was alleged in the second count of the information for the reason that the statement, "Brewed from choice Malt and fine Hops," borne on the label, was false and misleading, in that it conveyed the impression that the product aforesaid had been brewed exclusively from barley malt and hops, whereas, in truth and in fact, the said product had been brewed from barley malt, hops, and some other cereal or cereal product. Misbranding was alleged in the third count of the information for the reason that the article was labeled and branded so as to deceive and mislead the purchaser, being labeled "Brewed from choice Malt and fine Hops," thereby creating the impression that the product had been brewed from barley malt and hops exclusively, whereas, in truth and in fact, said product was not brewed exclusively from barley malt and hops, but from barley malt, hops, and some other cereal or cereal product. Misbranding was alleged in the fourth count of the information for the reason that the statement "Pilsener Style Beer," borne on the label, was false and misleading, in that it conveyed the impression that the product was a beer of the style of that brewed in Pilsen, Bohemia, exclusively from barley malt and hops, whereas, in truth and in fact, it was not that style of beer, but a beer brewed from barley malt, hops, and some other cereal or cereal product. Misbranding was alleged in the fifth count of the information for the reason that the article was labeled and branded so as to deceive and mislead the purchaser, being labeled and branded "Pilsener Style Beer," thereby creating the impression that the product was a beer of the style of that brewed in Pilsen, Bohemia, exclusively from barley malt and hops, whereas, in truth and in fact, it was not that style of beer, but a beer brewed from barley malt, hops, and some other cereal or cereal product.

On April 14, 1914, the defendant company, having withdrawn its plea of not guilty previously made, entered a plea of guilty to the first three counts of the information, and the court imposed a fine of $25. The fourth and fifth courts of the information were nol-prossed.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3438. Adulteration of catsup. U. S. v. Pioneer Preserving Co. and Ike Block et al. Plea of guilty. Fine, $225 and costs. Case against corporation nolle prossed.** (F. & D. No. 5197. I. S. No. 51–e.)

On November 3, 1913, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Pioneer Preserving Co., a corporation, Kansas City, Mo., and Ike Block, J. T. Wilson, and Fred Schwartz, president, treasurer, and secretary, respectively, of said company, all named as defendants in the information, alleging the sale by

said defendants under a guaranty that the article was not adulterated or misbranded within the meaning of the act of Congress of June 30, 1906, of a quantity of catsup which was so adulterated, and which said article in the same condition as when purchased and received from said defendants was, on or about August 6, 1912, in violation of said act, shipped by the purchaser thereof from the State of Missouri into the State of Kansas. The product was labeled: "Congress Brand Catsup Prepared with 1-10 of 1% Benzoate of Soda. Packed for Kansas City Wholesale Grocery Co., Kansas City, Mo."

Microscopical examination of a sample of the product by the Bureau of Chemistry of this department showed the following results: Mold filaments present in about 58 per cent of all microscopic fields examined; yeasts and spores, about 84 per one-sixtieth cubic millimeter; and bacteria, about 200,000,000 per cc. A partly decomposed product, as shown by the great number of organisms present.

Adulteration of the product was alleged in the information for the reason that it was represented that the product was a tomato catsup, whereas, in truth and in fact, said product consisted in part of a filthy, decomposed, and [or] putrid vegetable substance.

On April 15, 1914, the defendant Fred Schwartz entered his plea of guilty and the court imposed a fine of $75 and one-third of the costs. On April 17, 1914, the defendants Wilson and Block entered their pleas of guilty and were each fined $75 and one-third of the costs. The case against the corporation was nolle prossed.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3439. Misbranding of sambuca. U. S. v. August Saunig et al. (A. Saunig & Co.). Plea of guilty. Fine, $75.** (F. & D. No. 5200. I. S. No. 20737-d.)

On March 23, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against August Saunig and Eugene Strobini, doing business under the firm name and style of A. Saunig & Co., New York, N. Y., alleging shipment by said defendants in violation of the Food and Drugs Act, from the State of New York into the State of Pennsylvania, of a quantity of an article of food called sambuca, which was misbranded. The product was labeled: "Panorama di Napoli. Sambuca. Speciale Preparazione Della Casa A. S. C., New York, U. S. A. Distilleria Italiana," and the label also bore a picture of a volcano in action near a body of water, which was calculated to represent an Italian scene.

Investigation by the Bureau of Chemistry of this department as to the manufacture of the product disclosed the fact that it was a domestic product, and that it was manufactured in the United States by A. Saunig & Co., New York, N. Y.

Misbranding of the product was alleged in the information for the reason that it was labeled and branded as aforesaid, so as to deceive and mislead the purchaser thereof, in that said label would indicate that said article was a foreign product, to wit, a product of Italy, whereas, in truth and in fact, the said article was a product of the United States. Misbranding was alleged for the further reason that the article purported to be a foreign product, to wit, a product of Italy, when it was not so, but was a product of the United States.

On June 2, 1914, a plea of guilty was entered on behalf of the defendant firm and the court imposed a fine of $75.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3440. Adulteration of Mulford's wintergreens. U. S. v. 4 Wooden Boxes of Mulford's Wintergreens. Tried to the court and jury. Verdict for the Government. Decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5232. I. S. No. 12606-e. S. No. 1823.)

On or about June 10, 1913, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 4 wooden boxes, each containing 36 small tin boxes of Mulford's wintergreen confectionery, remaining unsold in the original unbroken packages in Albany, N. Y., alleging that the packages had been transported from the State of Pennsylvania into the State of New York, and charging adulteration in violation of the Food and Drugs Act. The shipping containers were branded: "Walker and Gibson, Albany, N. Y.—Glass—from H. K. Mulford Co. Chemists, Phila., New York, Chicago, Minneapolis." The retail packages were labeled: "Mulfords Wintergreens, H. K. Mulford Co., Chemists, Phila.—aid digestion, sweeten the breath, other flavors, violets, mints, aromatics, H. K. M. Co.—Mulford wintergreens 5c. Aid digestion, sweeten the breath, H. K. Mulford Co. Chemists, Philadelphia 51289."

Adulteration of the product was alleged in the libel for the reason that it contained 5.49 per cent of talc, the said talc being an ingredient deleterious and detrimental to health, and the use of it being forbidden by law in the manufacture of confectionery. On March 10, 1914, the case having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the following charge was delivered to the jury by the court (Ray, *J.*):

Gentlemen of the jury, this is a proceeding by the United States under the law known as the Pure Food and Drugs Act to condemn these four wooden boxes of wintergreens that you heard described. This law that you are called upon to enforce here, if it has been violated, and the Government contends that it has, is a wise law, an efficient law, enacted for the good of the people, all the people, the protection of trade, commerce, and individuals. No juror under his oath, no judge on the bench, has any right to question it or its wisdom, because when I take my seat here it is under a solemn oath that I will enforce the law as I find it and, of course, construe it. You take a solemn oath that you will enforce the law as you find it laid down to you by the court, and therefore you have nothing to do with the construction of the law or ordinarily with the meaning of it. It is for you to say what the facts are under the law as given. So, gentlemen, that simplifies this case so far as you are concerned very much.

Now, gentlemen, wintergreen they tell you is a drug. A stick of wintergreen candy which you buy for your child you would hardly call a drug. It would have a drug in it of course, if it had any of the oil of wintergreen to give it taste, and so the oil of peppermint or the essence of peppermint is a drug. But if you should purchase a stick of peppermint candy in the candy shop, or as they say a confectioner's shop, as in polite society they would speak of it, you would hardly say that the stick of peppermint candy was a drug. It contains a drug. However, gentlemen, should it appear that peppermint, wintergreen, or horehound candy, which has horehound in it, was made, manufactured, sold, and administered by doctors for medicinal purposes for the cure of disease, the alleviation or mitigation of disease, if that was the purpose in its manufacture and sale, even though there is a large amount of sugar and but a trifle of this essence or oil in it, why, then, of course, it would at once be taken out of the category of condiments and confections and would take its place in the category of drugs.

Now, Congress when it enacted this law undertook to define, so far as it reasonably could, a drug, a food, as the words are used in the act, and indicate what may be or may not be a confection as distinguished therefrom. Of course, the dictionary says that a confection may be a sweetmeat, any of the sweetmeats that a confectionery makes or sells, such as candy or other articles made of sugar, sirup, honey, or like anything of that nature. Of course, you all know that to make these candies, etc., distinguishable from the sugar which is the chief part of them they use various oils, such as wintergreen, peppermint, spearmint, and other things. You have been acquainted, of course, during boyhood and in childhood with peppermint candy and all those things.

Now, a confection may be defined to include an article produced by the mixing or compounding of sugars, sweets, etc., for pleasing the taste mainly. Of course you know well enough, and you don't need any doctors here to tell you, that sugar is an article of food. They might bring all the doctors in the United States to swear to you that sugar was a drug and you wouldn't believe it, and I wouldn't believe it. Of course, sometimes it comes under the head of drugs, when it is used with other things, for medicinal purposes mainly. It is then used as a drug, but of itself it is not a drug. When it is put up and changed over in certain forms it is then a sweetmeat or a confection. When it is used in connection with other things for medicinal purposes and something is mixed with it, it becomes for the time being not a drug of itself, but in the use that is made of it, the compound, a drug.

"The term 'drug,' as used in this act, shall include" (I read it to you yesterday; I will read it again) "all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use." That is, it must either be a medicine or a preparation recognized in the book. Of course as to these wintergreens, there is no pretense here that that particular composition is recognized in the United States Pharmacopœia, to which your attention has been called, as used in that section. That preparation is not mentioned or recognized there. Therefore, you must determine, gentlemen, what it is. Of course it is intended for internal use, but it is not recognized here; therefore it is not included here under this definition as a drug, unless it is a drug for other reasons. And it further says, "and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals." I will read that again: "and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals."

The defendant contends here that these wintergreens, these tablets, are a drug within the meaning of this act, for the reason that they may be used to sweeten the breath. Well, that, gentlemen, I will say to you as a matter of law, will not make that composition a drug within the meaning of the law. They claim they "aid digestion," and they explain why, by the use of the wintergreen, not the sugar; they don't claim that the sugar or the talc or whatever mineral oils there are in there, but the oil of wintergreen would aid digestion or alleviate indigestion. To be correct, cure indigestion; that the wintergreen would assist the stomach in getting rid of the gases produced by indigestion, and for that reason the tablets may be regarded as having a medicinal property. That is the contention of the defendant; that it is a drug, because the defendant says it is a mixture of substances, to wit, 93 parts of sugar, 5 parts of soapstone or talc, one-half of 1 part mineral oil, some starch, one-eighth of 1 part of the oil of wintergreen, and that the presence of that one-eighth of 1 part out of 100 parts, regarding that as divided up into 100 parts, and then you take 1/100 of that and divide that into 8 parts, one of those 8 parts you can see would represent the wintergreen that is in there.

Mr. Dowd. One of those 800 parts.

The Court. One-eighth of 1 of those parts. Now, if that is cut into 100 pieces you would have a representation of 100 parts, and one-eighth of 1 part, the evidence is, is oil of wintergreen. Therefore, if it was reduced, taken out, and separated and put in a solid, compared with that it would be one-eighth of 1/100 certainly, unless mathematics have changed, so it would be 1/800 of the whole, so that if you could so cut that up that fraction would show you a solid mass of oil of wintergreen. Now, counsel for the Government points to the fact that the Pharmacopœia of the United States specifies as a dose for medicinal purposes 16 drops, and they have given you the evidence as to the infinitesimal part of that dose that is represented in one of these tablets. I think the evidence tends to show that it would take some five boxes to get a dose; that you would have to eat five of these boxes of tablets before you would have a dose. Now, the United States attorney, the Government, says that that demonstrates to you, or should demonstrate, the fallacy of the contention by the defendant that this was ever intended as a medicine or for medicinal purposes or to be used as a drug for the cure or the mitigation of any disease or diseases. That it demonstrates it because recognized authority says you would have to take 16 drops—I think that is right, if I am wrong you can correct me—that you would have to eat five boxes of these tablets to get a dose, and the only purpose they point out of the wintergreen is to aid and cure indigestion, and they say if you had to take five boxes of that sugar, pure sugar with the mixture of soapstone, which is talc, that instead of aiding your digestion or the digestion of a man who had

indigestion that it would aggravate the disease, and that if he did not have indigestion before he certainly would have after he took the medicine. Of course, I mention that to you gentlemen as bearing on the reasonableness or unreasonableness of these contentions that have been put forward here by the respective parties as to what this is, what it was intended for, whether as a medicinal preparation, as a mixture of substances intended to be used for the cure or mitigation or prevention of disease of either man or other animals. Was it made and intended for that purpose and put on the market for that purpose, or was it made and put on the market as a confection and for the purpose of confectionery; that is, sugar, sweetmeats with certain additions, wintergreen in some cases and peppermint in others, because it is sweet and pleasant to the taste, and these various ingredients do make it more pleasant to the taste and more agreeable to the throat and all that sort of thing? Now, which was it?

If you find, gentlemen, under this evidence that this was a mixture of substances intended to be used and put on the market and sold for use for the cure, mitigation, or prevention of disease of either man or other animals, why, then, of course, gentlemen, you should find that it is not a confection, and then it would not be adulterated within the meaning of the act as applied to confectionery, because the act says: "In the case of confectionery, if it contain terra alba, barytes, talc"—I don't need to name the others—talc or spirituous liquors, etc., then it is adulterated. Of course, gentlemen, a mere trace of talc found in there accidentally or put there for some other purpose would not make it adulterated within the meaning of the law, but this is not a trace; it is 5 parts out of 100, and it is a material part, I will tell you as a matter of law. So that, gentlemen, if you find that these wintergreens are a confection within the definition of confectionery, as you have heard it given, then I tell you, as a matter of law, it will be your duty to find a verdict in favor of the Government for the condemnation of these four wooden boxes of wintergreens, because it is plainly, as a matter of law, within the condemnation of the act.

This is not a criminal case, gentlemen. This is not an attack upon these estimable gentlemen here in this city, men of the highest character, Walker & Gibson. This is not an attack on them, no reflection on them, nor intended to be. If the law is to be enforced it does not make any difference where the Government finds these impure and deteriorated articles, whether they find them in a barroom, in a cigar store, a drug store in this city, or in your parlor or mine, if it is a violation of the law for it to be made and put on the market at all, why, then, wherever found, whether it is found in the barn of the poor man or in the parlor of the rich man, it is equally a violation of the law, because it is the quality of the thing that condemns it, and not the character of the man who happens to be handling it. Of course, there is not the slightest evidence here that these gentlemen, these druggists, knew that they were handling something condemned by the law, not a particle of evidence to that effect. But that does not lessen your duty or mine if you find and believe on this evidence that this was a confection and not a drug. It is not the question of intent on these gentlemen's part at all. It is, What is the article? Of course there is a law against impure liquors and all that sort of thing.

Now, to illustrate: Of course, if liquor that is put on sale is a composite of poison, no pure liquor about it at all, but somebody is making it and sending it out and getting it on the market, of course, if they should find it in a low-down saloon here in Albany and seize it and try and condemn it, nobody would object, unless it were some particular citizens whose stomachs were so hardened that they would not appreciate a good drink and who wanted liquor with a bite and sting like a serpent; that would be the only liquor they would appreciate; they would be the only ones that would object to it being seized and destroyed as offensive to the law. But if by any imposition on you or I or Mr. Dowd or these other gentlemen, some one should sell you that liquor and you should take it home and the Government officers should come along and see it and find it on your sideboard, however much we might dislike to have it found there and taken away, we would probably thank our Government that it was discovered and removed. But it would be just as much their duty to seize it when found on our sideboard, don't you see, as it would to take it from the lowest saloon in the most degraded hamlet in the land. I merely mention that to illustrate our duty and why the enforcement of this law is not an impugning of the honesty or the integrity of any man or even of the manufacturer of the article necessarily. Of course, if the manufacturer knows and appreciates that he is violating the law and he does that, what he makes is subject to seizure and con-

demnation, not because he intended to violate the law, however, but because he makes the article which he does. If he were prosecuted criminally, of course, then his knowledge, intent, and purpose would be very material; but when you proceed simply against the property itself to condemn it, it is not the intent or the purpose—wrongful intent or purpose—of the manufacturer which is in issue, but it is the quality of the article which is made. Is it of a quality and character which violates the statute? If so, then it is not only the right but the duty of the Government to seize it. So that is this case. It is not a question whether these gentlemen who made this—Mulford & Co.—intended to violate the law. Did they violate the law? That is, did they make an article of confection and put it on the market which is forbidden; that is, if this is a confection made up of sugar, with a trace of wintergreen, one-half of one part mineral oil, a trace of starch, and five parts of talc—if they did that and put it on the market and it is an article of confection, then it is an article forbidden by the law and should be condemned in this proceeding. I tell you, gentlemen, it is entirely immaterial, if this is a confection and you so find, whether or not the talc may be injurious to health, because in that regard it is entirely immaterial, so far as the application of the law to this case is concerned, whether the confection is deleterious to health or not, because that section which I have read to you forbids absolutely the putting of talc into an article of confectionery. Of course, I have told you that that means an appreciable amount, and I have told you further that 5 parts in 100 in one of these little tablets is a material amount and sufficient to make it subject to condemnation if you find that is what it is.

Now, then, gentlemen, as to what this is, what it was made for and intended for, quoting the language of the act, "a substance or mixture of substances intended to be used," etc., the Government contends that these tablets were never intended to be used as a drug or a medicine or for the prevention or the cure of disease; that if they had been they would have been listed in this book that you have seen here. But they are not; they were put on a separate little paper, which has not been produced. And then the Government says that Mr. Mulford, the vice president, I think it was, wrote this letter—the vice president of the company, who was there managing it—that he wrote and said, referring to these wintergreens: "Trusting that this information will enable you to bring the matter of shipment of these various confections up to the proper classification bureau," etc., and that that is an admission on his part, made November 14, 1912, that these wintergreens which he specially mentions are confections; that they had been thinking about the law and knew of it; and that when he made that admission he spoke advisedly. It is for you to say. I submit it to you, as part of the evidence in this case, what they were manufactured for. What was that mixture made for and intended to be used for and put on the market for? Was it something to be used for the cure, mitigation, or prevention of disease or for common consumption, to take in your pocket and have one in your mouth because pleasing to the taste and sweet, just as you would have a licorice drop or a piece of candy, or something of that sort, or a gumdrop on your sideboard. These things I have mentioned last are confections, it is true.

Then, here, again, gentlemen, the Government calls attention to these shipping bills, etc., made out as you have heard described, and the Government contends that here was a straight admission on the part of this defendant company February 8, 1913, February 5, 1913, February 28, 1913, and February 7, 1913, when they made shipments of these wintergreens; they had stamped on there "Confectionery in tin, invoice value not exceeding 15 cents a pound." I think the stamp on there is the same; it reads the same in every case, so I do not need to go over that again. That after these dates and prior to April 15, 1913, when these tablets were shipped, that some of these were seized in a cigar store by the Government, and that gave them notice, and they went right on shipping them, but they changed their shipping bill and left off that designation "confectionery in tin," etc., and that accounts for this one shipping bill.

Now, gentlemen, it is for you to say was that an admission? Were those stamps characterizations? Did they speak the truth at the time they were made, and did they show the purpose for which those tablets were actually made and put upon the market—that is, whether it was a mixture of substances made and intended to be used and put on the market to be used and sold as a confection or as a drug or a medicine?

That is about all there is of this case for you to decide. If you find that it was a confection, then you find for the Government for the condemnation of

this property. If you find, on the other hand, it was made and put on the market, manufactured, and sent out and intended to be for the cure or mitigation or prevention of disease of either man or other animals, then, of course, it will be your duty here to find a verdict for this defendant.

Your requests to charge there I have covered, and I give you an exception where I refused to charge as requested.

Mr. HEPBURN. Will your honor give me an exception to such requests as you have not charged?

The COURT. Neither of you claim that these tablets were ever put out or intended to be put out or intended to be used as an article of food, do you?

Mr. HEPBURN. Unless you class confectionery under the head of food, as is done in the act.

The COURT. Oh, no; confectionery is not an article of food within the meaning of this law.

Mr. HEPBURN. I think the law says it is an article of food.

The COURT. It does?

Mr. HEPBURN. Yes.

The COURT. It says that it is?

Mr. HEPBURN. Yes.

The COURT. Where?

Mr. HEPBURN. "The term 'food,' as used herein, shall include all articles used for food, drink, confectionery, or condiment by man." You see it is mixed up there.

The COURT. That isn't it. This tells when these things are adulterated. In the case of drugs. In the case of confectionery. In the case of food. That is where is makes a distinction.

Mr. HEPBURN. I mean the definition of food covered confectionery.

The COURT. As excluded from that you don't claim that it is a food? You claim it is either a drug within that provision or confectionery.

Mr. HEPBURN. My claim is that it is a drug, and their claim is that it is confectionery.

The COURT. You don't want me to talk about this question of food. You know what a food is, don't you? Beefsteak would be a food; crackers would be a food; chickens would be a food in that sense of food, because there are provisions here: "In the case of food." There is no contention here that any substance has been mixed or packed with it so as to reduce or lower or injuriously affect its quality or strength?

Mr. HEPBURN. No.

The COURT. Because if you want me to come to that and hold it a food I shall direct a verdict against you on the instant.

Mr. HEPBURN. We don't claim it is a food.

The COURT. If you do, then I say that this talc, which is 5 parts to 100, would be just the same as though you had put 5 parts of sand into your sugar. If you want me to I will do it.

Mr. HEPBURN. No; I am speaking of the proposition that this is used for the purpose of——

The COURT (interrupting). I have given my charge on the proposition just as you two gentlemen have tried the case. If the jury find it is a drug, then, of course, their verdict will be for the defendant. If they find it is a confection, then, of course, they have got to find under my charge and instructions for the Government and condemnation. Any further requests?

Mr. DOWD. Nothing only that the jury be permitted to take these exhibits.

The COURT. Of course.

Mr. HEPBURN. I withdraw the fourth request. I want to ask for an exception to that portion of your honor's charge in which you charged the jury to the effect that if they find it to be a confectionery that it was adulterated in the meaning of the act.

The COURT. Yes; I have told them that as a matter of law, that that adulteration was sufficient and brings it within the law and subjects it to condemnation regardless of whether the talc was injurious to health or not. Congress had the right to say that.

Mr. HEPBURN. I don't want to seem fractious [captious?], but will your honor give me a general exception?

The COURT. It wouldn't do you any good.

Mr. HEPBURN. Then I would like an exception to that portion of your honor's charge in which you charge that the adulteration of five parts talc was a material adulteration.

The COURT. Yes; I charged it was sufficient and that it subjected these tablets to condemnation if found to be a confection. I will give you an exception to that.

Mr. HEPBURN. I would like an exception also to that part of your honor's charge in which you charge in regard to a dose amounting to 16 minims or 16 drops of wintergreen. You said that to make a dose of wintergreen they would have to take 16 drops.

The COURT. No; I said there was evidence here of that, that the book said that.

Mr. HEPBURN. It was merely a comment on the testimony?

The COURT. It was merely a comment on the testimony. Mr. Dowd called attention to that on the proposition and he claimed that taking that book to show what a dose is that is what he contends here, and I called the jury's attention to that, that in order to get a dose to help your digestion you would have to eat five boxes of these tablets. Of course they contend on their side that if a man had a little attack of indigestion and he wanted to cure it he would have to eat five boxes of these tablets with the sugar and talc, if he took a dose, and instead of helping his digestion it would be likely to give him indigestion; that is, if he didn't have it before.

Mr. HEPBURN. Will your honor grant me an exception to that?

The COURT. I will give you an exception to that.

Mr. HEPBURN. Can the jury take some of the boxes out with them; both with and without the talc?

The COURT. Why do you want them without the talc?

Mr. HEPBURN. So they can see them and examine them?

Mr. DOWD. Are they in evidence? They are not in evidence.

Mr. HEPBURN. We will take those that you put in evidence.

Mr. DOWD. If you will concede that ours have been manufactured for six years without talc they may take them. We have produced some of Park & Tilford's tablets without talc.

Mr. HEPBURN. I want to give them tablets both ways, with and without the talc, so that they can see the difference, just how these things are. It gives the jury a clearer idea of what the thing is.

Mr. DOWD. We don't care. They can take all these if they want to.

The COURT. Well, gentlemen, all I can say to you on that is you can take them; some have talc and some don't; I don't know as you can tell which is which.

Mr. HEPBURN. The ones with the word "Mulford" on have talc in and the ones without "Mulford" on have no talc in.

The COURT. Why don't you print your name on those [indicating]?

Mr. HEPBURN. We can't print it on those without the talc. We haven't discovered as yet how to do it.

The COURT. You make them both ways?

Mr. HEPBURN. This is our new construction since the time these were seized. Those without talc have no "Mulford" on the tablet.

The COURT. Well, gentlemen, they want you to see the one they have made since this seizure was made and which don't have any talc in. There [indicating] it is. You will find it in there. It don't have the word "Mulford" on. It has "Mulford" on the box, but not on the tablets; that is the point.

In the condition of my voice, gentlemen, have I made myself plain and clear to you in my charge? If there is any obscurity about any of it tell me, because it has been with an effort that I speak and in a sort of broken way, but I have tried to make it intelligible to you. If I have not, call my attention to it. Anything further?

Mr. HEPBURN. No; that is all

The COURT. You may retire, gentlemen, and you can simply say here by your verdict: We find for the Government, which will be adequate, and you can add to it.

Mr. HEPBURN. Yes; the necessary condemnation.

The COURT. Or for the defendant. You may retire.

The jury thereupon retired, and after due deliberation returned into court with a verdict in favor of the Government for condemnation of the property, finding that such property was not a drug or medicinal preparation, but confectionery, and that it contained a substantial amount of talc. Thereupon the H. K. Mulford Co., claimant, moved for an order setting aside the verdict of

the jury and directing a new trial upon the grounds that the verdict was contrary to the law and to the evidence and unsupported thereby; also upon the exceptions taken to the admission and rejection of evidence during the trial and the rulings made thereon and on the exceptions to the charge as recorded, which motion was denied by the court and to which ruling said claimant company excepted.

On March 31, 1914, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal and that the libelant should have judgment for the costs of the proceedings, taxed at $136.70.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3441. Adulteration of raisins. U. S. v. 70 Cases of Raisins. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5350. I. S. Nos. 3568-h, 3569-h, 3574-h, 3575-h. S. No. 1958.)

On October 14, 1913, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district a libel for the seizure and condemnation of 70 cases of raisins, 58 of which each contained 36 cartons and 12 of which each contained 45 cartons, remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been shipped on or about September 24, 1913, and transported from the State of West Virginia into the State of Pennsylvania, and charging adulteration in violation of the Food and Drugs Act. Fifty-eight of the cases were labeled: "36—Choice Cartons—California Seeded Raisins—Good eating brand—Consumers Fruit Co., Fresno, Cal." The cartons therein were labeled: "Good eating California seeded raisins—Packed for Consumers Fruit Co., California—Seeded by machinery—California seeded raisins—Absolutely clean." Twelve of the cases were labeled: "45 Choice Cartons—California Seeded Raisins—Packed at Fresno, California—Consumers Fruit Packing Co., California." (The cartons therein were labeled): "Seeded Raisins—Packed for Consumers Fruit Company, California—Three Roller Process Seeded Raisins—Guaranteed under Serial No. 7791—the Food and Drugs Act, June 30, 1906."

Adulteration was alleged in the libel for the reason that said article of food, to wit, raisins, consisted in whole or in part of a filthy and decomposed animal substance. Adulteration was alleged for the further reason that said article of food, to wit, raisins, consisted in whole or in part of a filthy and decomposed vegetable substance.

On May 1, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3442. Adulteration of canned tomatoes. U. S. v. 500 Cases of Canned Tomatoes. Consent decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5358. I. S. No. 5437-h. S. No. 1962.)

On October 21, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 500 cases, each containing two dozen cans of tomatoes, remaining unsold in the original unbroken packages at St. Louis, Mo., alleging that the

product had been transported in interstate commerce from the State of Maryland into the State of Missouri, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "Abbsco Brand Tomatoes Weights on Labels 2 Dozen Cans Size No. 3 Packed by Jas. Wallace Pkg. Co., Cambridge, Md." The cans were labeled: "Abbsco Brand Tomatoes (design tomato) Packed by Jas. Wallace Packing Co. at Cambridge, Dorchester Co., Md. Guaranteed by the packers under the Food and Drugs Act, June 30, 1906. Contents Weigh Not Less Than 2 Pounds (Design Indian.)"

It was alleged in the libel that the product was adulterated and liable to seizure, condemnation, and confiscation, as provided in the Food and Drugs Act, for the reason that a visual examination made of sample cans taken from 24 of said cases revealed and disclosed that 22 of said cans contained pieces of rotten tomatoes, and 20 of said cans contained pieces of mold and many green and defective tomatoes, and said product appeared to have been made and prepared from partly moldy and rotten tomatoes, without trimming or removing said rotten parts, and that said product consisted in whole or in large part of filthy, decomposed, and [or] putrid vegetable substances as above described, and that said product was of a deleterious character and unfit for use as food.

On May 6, 1914, the James Wallace Packing Co., claimant, having admitted the allegations of the libel and consented to a decree, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

NOTE.—When this case was reported for action it was not claimed by this department that the product was of a deleterious character.

**3443. Adulteration of tomatoes. U. S. v. 496 Cases of Canned Tomatoes. Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 5360. I. S. No. 5441-h. S. No. 1964.)**

On October 20, 1913, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 496 cases, each containing two dozen cans of tomatoes, remaining unsold in the original unbroken packages at St. Louis, Mo., alleging that the product had been transported in interstate commerce from the State of Maryland into the State of Missouri, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "Abbsco Brand Tomatoes Weights on Labels 2 Dozen Cans Size No. 3 Packed by Jas. Wallace Pkg. Co., Cambridge, Md." The cans were labeled: "Abbsco Brand Tomatoes (design tomato) Packed by Jas. Wallace Packing Co. at Cambridge, Dorchester Co., Md. Guaranteed by the packers under the Food and Drugs Act, June 30, 1906. Contents Weigh Not Less Than 2 Pounds (design Indian.)"

It was alleged in the libel that the product was adulterated and liable to seizure, condemnation, and confiscation as provided in said act, for the reason that a visual examination of sample cans, taken from 24 of said cases, revealed and disclosed that 22 of said cans contained pieces of rotten tomatoes and several large pieces of badly rotted tomatoes, and several cans contained a product of very bad flavor and unfit for food, and said product appeared to have been made and prepared in part from rotten tomatoes, and that said product consisted in whole or in large part of filthy, decomposed, and [or] putrid vegetable substances, and that said product was of a deleterious character and unfit for use as food within the meaning of said act of Congress.

On May 6, 1914, the said James Wallace Packing Co., claimant, having admitted the allegations of the libel and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

NOTE.—When this case was reported for action it was not claimed by this department that the product was of a deleterious character.

**3444. Adulteration and misbranding of apple and peach brandy. U. S. v. L. & A. Scharff Distilling Co. Plea of guilty. Fine, $30. (F. & D. No. 5409. I. S. Nos. 5229-e, 5230-e.)**

On April 21, 1914, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the L. & A. Scharff Distilling Co., a corporation doing business under the name of Consumers Distributing Co., St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about December 16, 1912, from the State of Missouri into the State of Illinois, of quantities of apple brandy and peach brandy which were adulterated and misbranded. The apple brandy was labeled: "Apple Brandy" (in large type) "A compound" (in small and inconspicuous type, together with the picture of an apple).

Analysis of a sample of this product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Alcohol (per cent by volume) | 42.65 |
| Methyl alcohol: None. | |
| Solids (grams per 100 cc) | 0.302 |
| Furfural (grams per 100 liters, 100° proof) | 1.06 |
| Volatile acids (grams per 100 liters, 100° proof) | 9.14 |
| Esters (grams per 100 liters, 100° proof) | 49.5 |
| Aldehydes (grams per 100 liters, 100° proof) | 2.34 |
| Fusel oil (grams per 100 liters, 100° proof) | 20.6 |
| Color insoluble in amyl alcohol (per cent) | 25.0 |

The results above indicate that this product consists in part of neutral spirits.

Adulteration of the product was alleged in the information for the reason that other substances, to wit, neutral spirits and water, had been substituted wholly or in part for apple brandy. Misbranding was alleged for the reason that the statement "Apple Brandy" and the design or device picturing an apple, borne on the labels of said product, were false and misleading, because they falsely represented and led the purchaser thereof into the belief that the contents of the bottles were genuine apple brandy, whereas, in truth and in fact, said article was not apple brandy but was a compound of brandy, neutral spirits, and water; and, further, in that said product was an imitation apple brandy and was offered for sale and sold under the distinctive name of apple brandy; and, furthermore, said article was labeled and branded so as to deceive and mislead the purchaser thereof into the belief that it was genuine apple brandy when not so.

The peach brandy was labeled: "Peach Brandy" (in large type together with the design of a peach) "Guaranteed to comply with the Food and Drugs Act, June 30, 1906. Consumers Distributing Company. Bottlers. St. Louis, U. S. A. a compound;" (The statement "a compound" being in small, inconspicuous type.)

Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

| | |
|---|---|
| Alcohol (per cent by volume) | 42.88 |
| Methyl alcohol: None. | |
| Solids (grams per 100 cc) | 0.252 |
| Volatile acid as acetic (grams per 100 liters, 100° proof) | 32.2 |
| Esters (grams per 100 liters, 100° proof) | 71.8 |
| Furfural (grams per 100 liters, 100° proof) | 1.17 |
| Aldehydes (grams per 100 liters, 100° proof) | 2.33 |
| Fusel oil (grams per 100 liters, 100° proof) | 22.6 |
| Color insoluble in amyl alcohol (per cent) | 50.0 |

The results above indicate that this product consists in part of neutral spirits.

Adulteration of the product was alleged in the information for the reason that other substances, to wit, neutral spirits and water, had been substituted wholly or in part for peach brandy. Misbranding was alleged for the reason that the statement "Peach Brandy" and the design or device picturing a peach, borne on the labels of said product, were false and misleading because they falsely represented and led the purchaser thereof into the belief that the contents of the bottles were genuine peach brandy, whereas, in truth and in fact, said article was not peach brandy but was a compound of brandy, neutral spirits, and water; and, further, in that said product was an imitation peach brandy and was offered for sale and sold under the distinctive name of peach brandy; and, furthermore, said article was labeled and branded so as to deceive and mislead the purchaser thereof into the belief that it was genuine peach brandy when not so.

On May 18, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $10 on each of the first and second counts of the information and a fine of $5 on each of the last two counts of the information, making a total fine of $30.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3445. Adulteration and misbranding of so-called sweet oil. U. S. v. F. W. Stute and George Van Ronzelen (Stute & Co.). Plea of guilty. Fine, $20.** (F. & D. No. 5422. I. S. No. 4548-e.)

On April 21, 1914, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against F. W. Stute and George Van Ronzelen, a copartnership doing business under the firm name and style of Stute & Co., St. Louis, Mo., alleging shipment by said defendants in violation of the Food and Drugs Act, on or about March 12, 1913, from the State of Missouri into the State of Illinois, of a quantity of so-called sweet oil which was adulterated and misbranded. The product was labeled: "Pure Refined Sweet Oil. Stute & Co., St. Louis, Mo."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results: Iodin number, Hanus, 111.6; Halphen test, strongly positive; the results above indicate that the product is largely or entirely cottonseed oil.

Adulteration of the product was alleged in the information for the reason that a substance, namely, cottonseed oil, had been substituted wholly or in part for sweet oil. Misbranding was alleged for the reason that the statement "Pure Refined Sweet Oil," borne on the labels of the bottles in which said

article was shipped and delivered for shipment, was false and misleading, because, as a matter of fact, said article was not sweet oil but was another substance composed wholly or in part of cottonseed oil; and, further, in that said article was labeled and branded so as to mislead and deceive the purchaser, being labeled "Sweet Oil," a term which is synonymous with olive oil, whereas, in truth and in fact, said article was not sweet oil or olive oil, but was another substance, consisting wholly or in part of cottonseed oil.

On May 1, 1914, a plea of guilty was entered on behalf of the defendant firm and the court imposed a fine of $20.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3446. Adulteration and misbranding of vinegar. U. S. v. 10 Barrels and 6 Barrels of a Product Purporting to be Fermented Apple Vinegar. Default decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 5424. I. S. Nos. 4103-h, 4105-h. S. No. 2007.)

On November 13, 1913, the United States attorney for the District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 10 barrels and 6 barrels of a product purporting to be fermented apple vinegar, remaining unsold in the original unbroken packages at Madison, Ind., alleging that the product had been transported from the State of Ohio into the State of Indiana, and charging adulteration and misbranding in violation of the Food and Drugs Act. The 10 barrels were labeled: (On one end) "Ohio Cider Vinegar Co., Cincinnati—Fermented Apple Vinegar—Apple Product." (On other end) "October 1, 1913—Fermented Apple Juice From Apple Waste Compounded with Distilled Vinegar. Water added in Fermentation to Legal Standard. Elmer Scott, Madison, Ind." The six barrels were labeled: (On one end) "Fermented Apple Vinegar—Apple Product—Cincinnati." (On other end) "October 1, 1913—Fermented Apple Juice from Apple Waste compounded with Distilled Vinegar—Water added in Fermentation to Legal Standard—Manufactured by the Ohio Cider Vinegar Co., Cincinnati, O."

Adulteration of the product was alleged in the libels for the reason that the barrels contained a product purporting to be fermented apple vinegar, for which a distilled vinegar and [or] dilute acetic acid had been mixed and packed with said article purporting to be fermented apple vinegar, and to which article aforesaid water had been added and substituted for said fermented apple vinegar so as to reduce, lower, and injuriously affect its quality and strength. Misbranding of the product was alleged for the reason that the statements on the brands and labels on one head of each of the barrels as to the ingredients and substances contained in said product, purporting to be fermented apple vinegar, were false and misleading, in that, in truth and in fact, the said product purporting to be fermented apple vinegar was a mixture containing distilled vinegar, dilute acetic acid, and water, and the said statements contained on said brands and labels aforesaid were calculated to deceive and mislead the purchaser thereof.

On February 27, 1914, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product should be sold by the United States marshal, and that before making such sale he should remove and obliterate all marks, brands, and figures thereon indicating the substances contained in the kegs and barrels, and should rebrand the same by placing thereon: "Imitation Apple Vinegar. Diluted below Standard Strength."

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3447. Adulteration and misbranding of bran. U. S. v. Springfield Milling Co. Plea of guilty. Fine, $15.** (F. & D. No. 5426. I. S. No. 1980–e.)

On May 12, 1914, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Springfield Milling Co., a corporation, Springfield, Minn., alleging shipment by said company in violation of the Food and Drugs Act, on or about October 5, 1912, from the State of Minnesota into the State of Illinois, of a quantity of bran which was adulterated and misbranded. The product was labeled: "For drawback Springfield Milling Co. Standard Brand Crude Protein 13.75% Crude fat 4.60% Crude Fiber 10.70% Springfield, Minn."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results: Total foreign material, 3.04 per cent; composed largely of added screenings.

Adulteration of the product was alleged in the information for the reason that a substance other than bran, namely, screenings, had been substituted in part for the article, and, further, in that a substance, namely, screenings, had been mixed and packed with said article so as to reduce, lower, or injuriously affect its quality or strength. Misbranding was alleged for the reason that the statement "Standard Bran," borne on each of the packages, was false and misleading because, as a matter of fact, said article was not composed entirely of bran, but contained, in addition to bran, approximately 3 per cent of screenings, and, further, in that said article was labeled and branded so as to deceive and mislead the purchaser into the belief that it was composed entirely of bran, whereas, in truth and in fact, said article was not composed entirely of bran, but was composed in part of screenings, which had been added to said bran.

On May 12, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $15.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3448. Adulteration of scallops. U. S. v. R. R. Higgins Co. Plea of nolo contendere. Fine, $25.** (F. & D. No. 5428. I. S. No. 24301–e.)

On April 30, 1914, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the R. R. Higgins Co., a corporation, Boston, Mass., alleging shipment by said company in violation of the Food and Drugs Act, on or about January 24, 1913, from the State of Massachusetts into the State of Maine, of a quantity of scallops which were adulterated. The product was labeled: "2 gal. Cape Scallops for Geo. C. Shaw Co. Preble St. Portland, Maine, from R. R. Higgins Co., Wholesale Dealers and Planters of Oysters, Clams, Quahaugs, Scallops, Lobsters, 142 & 144 Atlantic Ave., Boston, Mass."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed it to carry 14.32 per cent free liquids and the drained scallops to carry 13.70 per cent solids.

Adulteration of the product was alleged in the information, for the reason that a substance, namely, water, had been mixed and packed with the article so as to reduce, lower, or injuriously affect its quality or strength.

On May 12, 1914, the defendant company entered a plea of nolo contendere to the information and the court imposed a fine of $25.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3449. Adulteration and misbranding of tomato catsup. U. S. v. 7 Cases of Tomato Catsup. Default decree of condemnation, forfeiture, and destruction.** (F. & D. Nos. 5439, 5442. I. S. No. 3022-h. S. No. 2019.)

On November 19, 1913, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 7 cases of tomato catsup, remaining unsold in the original unbroken packages at the ports of Aberdeen or Hoquiam, Wash., alleging that the product had been shipped on or about November 14, 1913, and transported from the State of California into the State of Washington, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Right kind please R. K. P. brand. Tomato Catsup. Net contents six pounds four ounces, contains 3/10 of 1% benzoate of soda. Put up by Pacific Preserve Co. San Francisco and San Leandro."

It was alleged in the libel that the product was misbranded and further alleged that it was adulterated, in that the product consisted in whole or in part of filthy, decomposed, and [or] putrid vegetable substances, and further contained harmful, poisonous, and deleterious bacteria and spores, and that the catsup was moldy and unfit for consumption or use and injurious to health, and that the presence of said injurious, deleterious, harmful, and poisonous ingredients or substances above mentioned was not declared or mentioned on said label or brand; all in violation of the provisions of the act aforesaid. It was further alleged in the libel that each of the representations and statements contained in the design, label, or branding description printed, attached, or written upon the 7 cases of catsup were false, misleading, and untrue, and that said food product was not pure and did not consist wholly of the substances named on said label. [When this case was reported for action it was not claimed by this department that the product contained "harmful, poisonous, and deleterious bacteria and spores."]

On April 27, 1914, the case having come on for final hearing, and no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

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S. R. A.—Chem. 9, Suppl. Issued February 11, 1915.

U. S. DEPARTMENT OF AGRICULTURE,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, Chief of Bureau.

# SERVICE AND REGULATORY ANNOUNCEMENTS.[1]

SEPTEMBER, 1914.

## SUPPLEMENT.[2]

N. J. 3450–3500.

## NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

**3450. Adulteration of catsup. U. S. v. 3 Barrels of Catsup. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5440. I. S. No. 3027-h. S. No. 2020.)

On November 19, 1913, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 3 barrels of tomato catsup, remaining unsold in the original unbroken packages at Tacoma, Wash., alleging that the product had been shipped on or about November 15, 1913, and transported from the State of California into the State of Washington, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Lewis Packing Co. Red Rose Brand Catsup. 1/5 of 1% Benzoate of Soda—San Francisco—Tomatoes, sugar, glucose, salt, spices, vinegar."

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of filthy, decomposed, and [or] putrid vegetable substances and, further, contained harmful, poisonous, and deleterious bacteria and spores and, further, that said 3 barrels of catsup were moldy and unfit for consumption or use and injurious to health; that the presence of said injurious, deleterious, harmful, and poisonous ingredients or substances above described and mentioned was not declared or mentioned on said label or brand, all in violation of the Food and Drugs Act. It was further alleged that each of the representations and statements contained in the design, label, or branding description, printed, attached, or written upon said 3 barrels of catsup were false and misleading and untrue, and it was further alleged that the said food product was not pure and did not consist wholly of the sub-

[1] In conformity with a uniform plan for the issuance of information, instructions, and notices of a regulatory nature by various branches of the department, as prescribed by the Acting Secretary of Agriculture in memorandum No. 57, dated December 26, 1913, this publication is issued monthly by the Bureau of Chemistry. It covers approximately the month for which it is dated, and each month's issue is expected to appear during the succeeding month. Free distribution is limited to firms, establishments, and journals especially concerned. Others desiring copies may obtain them from the Superintendent of Documents, Government Printing Office, Washington, D. C., at 5 cents each, or 50 cents a year.

[2] No supplements will be issued to the October, November, and December, 1914, Service and Regulatory Announcements. Following the supplement to S. R. A., Chem. 9 (1914), the supplements will be numbered consecutively, beginning with S. R. A., Chem. Suppl. 1.

stances named on said label. (When this case was reported for action it was not claimed by this department that the product "contained harmful, poisonous, and deleterious bacteria and spores.")

On April 27, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3451. Adulteration of tomato catsup and purée. U. S. v. 7 Cases of Tomato Catsup and Purée. Default decree of condemnation, forfeiture, and destruction.** (F. & D. Nos. 5443, 5444, 5469. I. S. Nos. 3023-h, 3277-h. S. No. 2019.)

On November 19, 1913, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and on April 27, 1914, an amended libel, for the seizure and condemnation of 7 cases of tomato catsup and purée remaining unsold in the original unbroken packages at Aberdeen, Wash., alleging that the product had been shipped on or about November 14, 1913, and transported from the State of California into the State of Washington, and charging adulteration in violation of the Food and Drugs Act. The cases of catsup and retail packages therein were labeled: "California's Choicest Condiments. Kandy Brand Catsup—Made of selected ripe tomatoes without artificial color and without chemical preservatives. Pacific Preserve Co. San Francisco. Works at San Leandro, Cal." The cases of purée were labeled: "Vienna Restaurant, Aberdeen;" and each can contained in said four cases was marked with the letter "P" on the top of the can.

Adulteration of the products was alleged in the libel and amended libel for the reason that they consisted in whole or in part of filthy, decomposed, and [or] putrid vegetable substances, and, further, contained harmful, poisonous, and deleterious bacteria and spores, and that said products were moldy and unfit for consumption or use and injurious to health, and that the presence of said injurious, deleterious, harmful, and poisonous ingredients or substances was not declared or mentioned on the label or brand, all in violation of the provisions of the act of June 30, 1906, aforesaid. It was further alleged that each of the representations and statements contained in the designs, labels, or branding descriptions, printed, attached, or written upon the labels of the products, were false and misleading and untrue, and that said food products were not pure and did not consist wholly of the substances named on the labels. (When this case was reported for action it was not claimed by this department that the product "contained harmful, poisonous, and deleterious bacteria and spores.")

On April 27, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3452. Adulteration and misbranding of feed. U. S. v. Allen Baker (Allen Baker Commission Co.). Plea of nolo contendere. Fine, $25 and costs.** (F. & D. No. 5446. I. S. No. 27806-e.)

On February 16, 1914, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Allen Baker, doing business under and by the name Allen Baker Commission Co., St. Louis, Mo., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about September 28, 1912, from the State of Illinois into the State of Indiana, of a quantity of stock feed which was adulterated and misbranded. The product was labeled:

"Apex Fancy Mill Run Mixed Feed. Pure Bran & Middlings Guaranteed Analysis not less than protein 14.00 to 17.00%, Crude fat 4.00 to 5.00% Allen Baker Commission Co., St. Louis, Mo. 100 lbs. 8321."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the presence therein of 8 per cent screenings.

Adulteration of the product was alleged in the information for the reason that a substance other than bran and middlings, namely, screenings, had been substituted in part for the article; and, further, in that screenings had been mixed and packed with the article so as to reduce or lower or injuriously affect its quality or strength. Misbranding was alleged for the reason that the statement, "Pure Bran and Middlings," borne on the packages in which said article was delivered for shipment, was false and misleading, because, as a matter of fact, said article was not composed entirely of bran and middlings, as represented by said statement, but was composed in part of screenings; and, further, in that said article was labeled and branded so as to deceive and mislead the purchaser into the belief that it was composed entirely of bran and middlings, whereas said article was not composed entirely of bran and middlings, but contained in addition to bran and middlings approximately 8 per cent of screenings.

On May 13, 1914, the defendant entered a plea of nolo contendere to the information and the court imposed a fine of $25 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3453. Adulteration and misbranding of wines (Sparkling Moselle, Sparkling Sauternes [Sauterne], and Sparkling Burgundy). U. S. v. 41 Cases, More or Less, of California Wine. Default decree of condemnation and forfeiture. Product ordered sold.** F. & D. No. 5447. I. S. Nos. 326-h, 327-h, 328-h. S. No. 2023.)

On November 25, 1913, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 41 cases of bottled sparkling moselle, sparkling sauternes [sauterne], and sparkling burgundy, remaining unsold in the original unbroken packages at Chicago, Ill., alleging that the product had been shipped on October 13, 1913, and transported from the State of California into the State of Illinois, and charging adulteration and misbranding in violation of the Food and Drugs Act. The sparkling moselle was labeled: (Capsule) "Mont Rouge" (Neck label) "Chauché & Bon Sparkling Moselle Type Mont Rouge" (Principal label) "Mont Rouge (Monogram C & B) Vineyard Livermore California Pure California Sparkling Moselle Chauché & Bon San Francisco Guaranteed under Food and Drugs Act June 30, 1906 by Chauché & Bon Serial No. 13520." The sparkling sauternes [sauterne] were [was] labeled: "Mont Rouge" (Neck label) "Chauché & Bon Mont Rouge Pure California Sparkling Sauternes" (Principal label) (Monogram C & B) Mont Rouge Vineyard Livermore California Sparkling Sauternes Type Chauché & Bon San Francisco Guaranteed under Food and Drugs Act June 30, 1906 by Chauché & Bon Serial No. 13520." The sparkling burgundy was labeled: (Capsule) "Mont Rouge" (Neck Label) "Chauché & Bon Mont Rouge Pure Sparkling Burgundy" (Principal label) (Monogram C & B) "Mont Rouge Vineyard Livermore California Pure California Sparkling Burgundy Chauché & Bon San Francisco Guaranteed under Food and Drugs Act June 30, 1906 by Chauché & Bon Serial No. 13520."

Adulteration of all of these products was alleged in the libel for the reason that a certain beverage, to wit, an artificially carbonated wine, had been mixed and packed with the articles of food aforesaid so as to reduce, lower, and injuriously affect the quality and strength of the articles of food aforesaid. Adulteration was alleged for the further reason that a certain beverage, to wit, an artificially carbonated wine, had been substituted wholly for the articles of food aforesaid, and for the further reason

that a certain beverage, to wit, an artificially carbonated wine, had been substituted in part for the articles of food aforesaid. Misbranding of the products was alleged for the reason that each of the bottles filled with the articles of food aforesaid bore, respectively, the labels in words and figures as set forth above, which said labels borne on the bottles aforesaid were false and misleading in that said labels aforesaid purported to state that the articles of food, to wit, the liquors or beverages, were, respectively, genuine California sparkling moselle wine, genuine California sparkling sauternes [sauterne] wine, and genuine California sparkling burgundy wine, whereas, in truth and in fact, the articles of food aforesaid, to wit, the liquors or beverages aforesaid, were not, respectively, genuine California sparkling moselle wine, genuine California sparkling sauternes [sauterne] wine, and genuine California sparkling burgundy wine, but were, respectively, artificially carbonated California moselle wine, artificially carbonated California sauternes [sauterne] wine, and artificially carbonated California burgundy wine. Misbranding was alleged for the further reason that said labels deceived and misled the purchaser into the belief that the articles of food aforesaid were, respectively, genuine bottle-fermented California sparkling moselle wine, genuine bottle-fermented California sparkling sauternes [sauterne] wine, and genuine bottle-fermented California sparkling burgundy wine, whereas, in truth and in fact, the articles of food aforesaid were not, respectively, bottle-fermented California sparkling moselle wine, bottle-fermented California sparkling sauternes [sauterne] wine, and bottle-fermented California sparkling burgundy wine, but were, respectively, artificially carbonated California sauternes [sauterne] wine, and artificially carbonated California burgundy wine. Misbranding was alleged for the further reason that said labels were false and misleading, in that the labels aforesaid purported to state that the articles of food aforesaid were, respectively, genuine California sparkling moselle wine, genuine California sparkling sauternes [sauterne] wine, and genuine California sparkling burgundy wine, whereas, in truth and in fact, the articles of food aforesaid, to wit, the liquors or beverages aforesaid, were not, respectively, genuine bottle-fermented California sparkling moselle wine, genuine bottle-fermented California sparkling sauternes [sauterne] wine, and genuine bottle-fermented California sparkling burgundy wine, but were, respectively, artificially carbonated California sparkling moselle wine, artificially carbonated California sparkling sauternes [sauterne] wine, and artificially carbonated California sparkling burgundy wine, and were offered for sale under the distinctive names of other articles of food, to wit, respectively, California sparkling moselle, California sparkling sauternes [sauterne], and California sparkling burgundy.

On June 9, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the words "Sparkling Moselle Type" and "Pure California Sparkling Moselle"; the words "Sparkling Sauternes Type" and "Pure California Sparkling Sauternes"; and the words "Sparkling Burgundy Type" and "Pure California Sparkling Burgundy" should be obliterated from the labels aforesaid, and in lieu thereof that there should be printed and placed upon each of the bottles of moselle and sauterne a label or labels of suitable size containing the words "Artificially Carbonated California White Wine," and upon each of the bottles of burgundy a label or labels of suitable size containing the words "Artificially Carbonated California Red Wine," and that the product should be sold by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3454. Adulteration and misbranding of lemon flavor. U. S. v. One Keg * * * Purporting to be Terpeneless Lemon Flavor. Default decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 5467. I. S. No. 4452-h. S. No. 2040.)

On December 9, 1913, the United States attorney for the District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district a libel for the seizure and condemnation of 1 keg containing 25

gallons of a product purporting to be terpeneless lemon flavor, remaining unsold in the original unbroken package at Indianapolis, Ind., alleging that the product had been transported from the State of Illinois into the State of Indiana, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Superlative Brand Food Flavors and Colors. Soluble Terpeneless Lemon Flavor. To gallon cold syrup add 1 ounce Lemon Flavor, 1 ounce Acid Solution, 1 ounce Sparkling Foam. Mix thoroughly and strain. Manufactured for N. Loewenstein & Co., 155 N. Clark St., Chicago, Ill. Guaranteed by N. Loewenstein & Co. under the Food and Drugs Act, June 30, 1906. Serial No. 36597."

Adulteration of the product was alleged in the libel for the reason that a dilute terpeneless lemon flavor had been mixed and packed with said product and substituted for said product so as to reduce, lower, and injuriously affect its quality and strength. Misbranding was alleged for the reason that the statements on the marks, brands, and labels on the keg as to the ingredients and substances contained in the product packed in said keg, purporting to be terpeneless lemon flavor, were false and misleading, in that, in truth and in fact, said product, purporting to be terpeneless lemon flavor, was not a terpeneless lemon flavor, but a dilute terpeneless lemon flavor which had been mixed with and packed with and substituted for terpeneless lemon flavor, and the statements contained on said marks, brands, and labels aforesaid were calculated to deceive and mislead the purchaser thereof.

On February 27, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal, but that before making such sale he should remove and obliterate all marks, brands, and figures thereon indicating the substances contained in said keg, and should rebrand the same by placing thereon "Dilute Terpeneless Lemon Flavor."

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3455. Adulteration of tomato pulp. U. S. v. 200 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5489. I. S. No. 2976-h. S. No. 2052.)

On December 17, 1913, the United States attorney for the Eastern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases, each containing 4 dozen cans of tomato pulp, remaining unsold in the original unbroken packages at Beaumont, Tex., alleging that the product had been transported from the State of Maryland into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "Net weight on labels. J. Langrall and Bro. Packers of the (picture of Indian chief) 4 dozen No. 1 cans Maryland Chief Brand Tomato Pulp, Baltimore, Md." (Stencil on side:) "Reed, Beaumont, Texas." Each of the cans was labeled: "Maryland Chief Brand Tomato Pulp made from pieces and trimmings of tomatoes Packed by J. Langrall & Bro., Inc., Baltimore, Md. Maryland Chief Brand (picture of Indian chief) Trade Mark Registered 1878, Contents 11 oz."

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of filthy, decomposed and [or] putrid vegetable substance unfit for food; that is to say, tomatoes containing an excessive number of bacteria, yeasts and spores and moldy fragments of the product partially decomposed.

On April 9, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3456. Adulteration of tomato pulp. U. S. v. 400 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5497. I. S. No. 2978-h. S. No. 2062.)

On December 24, 1913, the United States attorney for the Eastern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 400 cases of tomato pulp, remaining unsold in the original unbroken packages at Beaumont, Tex., alleging that the product had been transported in interstate commerce from the State of Maryland into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "Family Brand Tomato Pulp packed by D. E. Foote & Co., Baltimore, Md." (Stencil on end) "P. J. Gro. Co., Beaumont, Texas." The cans were labeled: "Family Brand contents 10 oz. or over Tomato Pulp made from small tomatoes and trimmings packed by D. E. Foote and Co. Inc., Baltimore, Md."

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of filthy, decomposed, and [or] putrid vegetable substance unfit for food; that is to say, said product consisted of numerous small moldy fragments and partially decomposed [parts of (?)] vegetables.

On April 9, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3457. Adulteration and misbranding of vinegar. U. S. v. Price & Lucas Cider & Vinegar Co. Plea of nolo contendere. Fine, $1,000 and costs.** (F. & D. No. 5501. I. S. No. 5938-e.)

On April 1, 1914, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district an information against the Price & Lucas Cider & Vinegar Co., a corporation doing business in the city of Pittsburgh, Pa., alleging shipment by said company in violation of the Food and Drugs Act, on October 17, 1912, from the State of Pennsylvania into the State of New Jersey, of a quantity of vinegar which was adulterated and misbranded. The product was labeled: "Liberty Bell Brand Pure New York State Apple Vinegar—Unexcelled in purity, quality and flavor—Serial No. 3390. The Price & Lucas Cider & Vinegar Co., Pittsburg, Pa." (Blown in bottle) "Lash's Bitters Co., New York—Chicago—San Francisco."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results, reported in grams per 100 cc except when otherwise stated:

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|---|---|
| Specific gravity, 15.6.°/15.6° C | 1.0063 |
| Alcohol (per cent by volume) | 0.17 |
| Glycerol | 0.02 |
| Solids | 0.25 |
| Nonsugar solids | 0.18 |
| Reducing sugar, invert | 0.07 |
| Reducing sugar, after evaporation | 0.06 |
| Reducing sugar, after inversion | 0.07 |
| Polarization, direct, at 22° C., undiluted (°V.) | +0.4 |
| Ash | 0.04 |
| Ash, insoluble in water | 0.01 |
| Alkalinity of soluble ash (cc N/10 acid per 100 cc) | 2.0 |
| Soluble phosphoric acid (mg per 100 cc) | 0.4 |
| Insoluble phosphoric acid (mg per 100 cc) | 1.3 |

Acid, as acetic..... 3.61
Volatile acid, as acetic..... 3.61
Fixed acid, as malic: Trace.
Lead precipitate in 30 minutes: None.
Color (degrees, brewer's scale, 0.5 inch)..... 8.5
Color: All removed by fuller's earth.

Product consists of a mixture of vinegar and dilute acetic acid or distilled vinegar and water; colored with caramel.

Adulteration of the product was alleged in the information for the reason that certain substances, to wit, dilute acetic acid or distilled vinegar and water, had been mixed and packed with said article of food so as to reduce and lower and injuriously affect its quality and strength, and, further, in that the aforesaid substances were substituted in whole or in part for the true apple vinegar which said article of food purported to be, and, further, in that said article of food was artificially colored with a certain substance which gave it the appearance of genuine apple vinegar and thereby concealed the fact that it was not a genuine apple vinegar, but an inferior and spurious article composed of a mixture of dilute acetic acid or distilled vinegar and water. Misbranding was alleged for the reason that the label on the product bore the following statement, to wit, "Pure New York State Apple Vinegar," which said statement was false and misleading in that it purported and represented to purchasers of said article that the same was pure apple vinegar, whereas, in truth and in fact, said article was not pure apple vinegar, but was a mixture of dilute acetic acid or distilled vinegar and water artificially colored to resemble true apple vinegar, and said article of food was further misbranded in that it was labeled and branded so as to deceive and mislead the purchaser in this, that its label purported and represented to purchasers of said article that the same was pure apple vinegar, whereas, in truth and in fact, it was not pure apple vinegar, but a mixture of dilute acetic acid or distilled vinegar and water. It was further alleged in the information, in substance, that on October 18, 1909, a criminal information was filed in the District Court of the United States for the Western District of Pennsylvania, charging the defendant with having shipped on December 2, 1908, in violation of the Food and Drugs Act, from the State of Pennsylvania into the State of West Virginia, an article of food, to wit, vinegar, which was adulterated and misbranded within the meaning of said act, and that on November 13, 1909, in said court, upon a plea of nolo contendere entered by the defendant to said information, the said defendant was sentenced to pay a fine of $50, all of which appears in a record of criminal proceedings No. 2, October term, 1909, instituted by the United States against said defendant in said court.

On May 12, 1914, the defendant company entered a plea of nolo contendere to the information in the present case, and the court imposed a fine of $1,000 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3458. Misbranding of tomatoes. U. S. v. 9 Cases of Tomatoes. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5517. S. No. 2079.)

On January 12, 1914, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 9 cases, each containing 48 20-ounce cans of tomatoes, remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been shipped on or about November 29, 1913, and transported from the State of New Jersey into the State of Pennsylvania, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: (On case) "I. I. Co. New York Extra Choice Peeled Tomatoes Packed in Sanitary Cans 48–No. 2." (On cans) "Peeled

Tomatoes Cipolla Brand (picture of tomato vine bearing red, ripe tomatoes) Packed in sanitary cans, no acid or solder used Pomidori Pelati (design of landscape with four figures in Italian costume) This product contains absolutely no preservatives of any kind. V. P. Co. Trade Mark The Italian Importing Co., New York, sole distributors. Contains 19½ ounces * *" (On tops of cans) "Vesuvian." (On bottoms of cans) "Sanitary."

Misbranding of the product was alleged in the information for the reason that it was labeled and branded so as to deceive and mislead the purchaser in that each of said cans containing the article bore a label as set forth above so that the purchaser would be deceived and misled into the belief that the said article had been produced in the Kingdom of Italy, whereas, in truth and in fact, the said article had not been produced in the Kingdom of Italy, but had been produced in the United States of America, and had been packed at Vineland, in the State of New Jersey, in the said United States of America. Misbranding was alleged for the further reason that the product was misbranded in that it was labeled and branded so as to purport to be a foreign product when not so, in that each of said cans was labeled and branded as aforesaid, by virtue of which label and brand the said article purported to have been produced in the Kingdom of Italy, whereas, in truth and in fact, the said article had not been produced in the Kingdom of Italy, but had been produced in the United States of America, and had been packed at Vineland, in the State of New Jersey, in the said United States of America.

On May 8, 1914, the Vesuvian Preserving Co., of New York, N. Y., and Vineland, N. J., claimant, having admitted the averments in the libel, but denying any intention of violating any of the laws of the United States, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to the said claimant upon payment of all the costs of the proceedings and the execution of a bond in the sum of $50, in conformity with section 10 of the act.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3459. Adulteration and misbranding of beer. U. S. v. 60 Cases, More or Less, of Bottled Beer. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5561. I. S. Nos. 6326-h, 6327-h. S. No. 2097.)

On January 30, 1914, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 60 cases, each containing 3 dozen bottles of beer, remaining unsold in the original unbroken packages at Sikeston, Mo., alleging that the product had been shipped by the Cairo Brewing Co., Cairo, Ill., and transported from the State of Illinois into the State of Missouri, and charging adulteration and misbranding in violation of the Food and Drugs Act. Thirty-five cases were labeled: "Cairo's own lager beer brewed from choice malt and hops—Cairo Brewing Co. Cairo, Ill. Cairo Brewing Co. Cairo, Ill." The bottles in said cases were labeled: "Cairo's own lager beer brewed from choice malt and hops, Cairo Brewing Co., Cairo, Ill." Twenty-five of the cases and the bottles therein were labeled: "Of rare old age and rich quality—Elks Brew—Brewed and bottled by Cairo Brewing Co., Cairo, Ill. Guaranteed by Cairo Brewing Co. Cairo, Ill. under the Food and Drugs Act June 30 1906 Serial No. 13637. This beer is brewed from choice malt and Bohemian hops. Aus Feinsten Malz und Importirten Saazer Hopfen Gebraut—Cairo Brewing Co., Cairo, Ill."

Adulteration of the product was alleged in the libel for the reason that in the manufacture of said product some cereal or cereal product other than malt had been substituted in part for malt in such manner as to reduce and lower and injuriously affect the quality and strength of said product. Misbranding was alleged for the reason that the said labels and brands on the bottles and cases, to wit, "Brewed from choice

malt and hops" and "This beer is brewed from choice malt and Bohemian hops," would create the belief and would lead the purchaser thereof to believe that said product was an all-malt product, when, in truth and in fact, said product was not an all-malt product, but, on the contrary thereof, some cereal or cereal product other than malt had been substituted in part therefor.

On March 21, 1914, the said Cairo Brewing Co., claimant, having entered its appearance and filed its claim and admitted the allegations in the libel and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon payment of all the costs of the proceedings and the execution of good and sufficient bond in the sum of $500, in conformity with section 10 of the act, one of the conditions of said bond being that the claimant should eliminate from the labels and trade-marks on the bottles and cases all pictures and representations of sprigs of hops and barley, and the words "Brewed from choice malt and hops."

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 24, 1914.*

**3460. Adulteration and misbranding of maple flavor. U. S. v. R. W. Snyder. Plea of guilty. Fine, $50.** (F. & D. No. 5569. I. S. No. 1873-e.)

On April 28, 1914, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against R. W. Snyder, Battle Creek, Mich., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about October 21, 1912, from the State of Michigan into the State of Ohio, of a quantity of so-called maple flavor which was adulterated and misbranded. The product was labeled: "Snyder's Superior Flavors Maple For Flavoring Ice Cream, Jellies, Custards, Sauces, Pastry, etc. R. W. Snyder. Battle Creek, Mich. Guaranteed under the Food and Drugs Act June 30th 1906. Serial No. 3554. This bottle contains two full ounces. This extract is sold with a guarantee. If not satisfactory, return to the party from whom purchased, and receive your money back. R. W. Snyder."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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| Alcohol (per cent by volume) | 49.54 |
| Solids (grams per 100 cc) | 0.35 |
| Vanillin (grams per 100 cc) | 0.01 |
| Ash (per cent) | 0.02 |
| Alkalinity of ash (cc N/10 acid per 100 grams) | 1.72 |

The product is a hydroalcoholic solution containing vanillin and other substances, and having a flavor in imitation of, but distinguishable from, flavor derived from maple.

Adulteration of the article was alleged in the information, for the reason that a substance, namely, an imitation maple flavor, had been mixed and packed with the article, so as to reduce and lower and injuriously affect its quality and strength, and for the further reason that a substance, namely, imitation maple flavor, had been substituted wholly or in part for genuine maple flavor, which the article, by its label, was purported to be. Misbranding was alleged for the reason that the statement "Maple For Flavoring," borne on the labels of the bottles in which the article was shipped, was false and misleading, because it was calculated to deceive and mislead purchasers into the belief that said article was a genuine maple flavor prepared from a product of the maple tree, whereas, in truth and in fact, said article was not genuine maple flavor, but was an imitation of maple flavor; and for the further reason that said article was an imitation of genuine maple flavor prepared from a product of

the maple tree, and was offered for sale and sold under the distinctive name of maple flavor, and for the further reason that said article was labeled and branded so as to deceive and mislead the purchaser into the belief that it was a genuine maple flavor prepared from a product of the maple tree, when, as a matter of fact, said article was not a genuine maple flavor, but was an imitation of maple flavor.

On May 1, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $50.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 28, 1914.*

**3461. Adulteration and misbranding of bran. U. S. v. 200 Sacks of Bran. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5574. I. S. No. 2388-h. S. No. 2105.)

On or about February 14, 1914, the United States attorney for the Northern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 sacks of bran, remaining unsold in the original unbroken packages at Parkersburg, W. Va., alleging that the product had been shipped in January, 1914, by the Northwestern Elevator & Mill Co., Mount Vernon, Ohio, and transported in interstate commerce from the State of Ohio into the State of West Virginia, and charging adulteration and misbranding in violation of the Food and Drugs Act. Some of the bags were labeled: "The Northwestern Elevator & Mill Co., Mt. Vernon, O. Taylor's Bran—100 lbs. Guaranteed analysis not less than Protein 14.00 to 15.00%, Crude Fat 4.00 to 5.00%, Crude Fibre 5.00 to 6.00%." The remainder of the bags were labeled: "Northwestern Elevator & Mill Co., Mt. Vernon, Ohio Taylor's Bran 100 lbs. net.—Guaranteed analysis not less than Protein 13.00 to 15.00%, Crude Fat 4.00 to 5.00%, Crude Fibre 5.00 to 6.00%."

It was alleged in the libel that the product was adulterated and misbranded in violation of the act of Congress of June 30, 1906, in that an analysis of the product showed that it contained 5.31 per cent foreign matter which consisted chiefly of added screenings and which had been mixed and packed with the bran in such manner as to reduce and lower or injuriously affect its quality or strength, and that said product was misbranded, in that it was labeled "Bran," when, in truth and in fact, the said product contained added screenings.

On April 7, 1914, the said Northwestern Elevator & Mill Co., claimant, having admitted the allegations in the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $500, in conformity with section 10 of the act, one of the conditions of which was that the bran should be relabeled and marked in accordance with the act of Congress and the regulations thereunder and should not be disposed of in violation of any Federal or State statute.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 28, 1914.*

**3462. Adulteration and misbranding of vinegar. U. S. v. P. H. Sugrue (P. H. Sugrue & Sons). Plea of guilty. Fine, $10 and costs.** (F. & D. No. 5592. I. S. No. 2672-c.)

On March 19, 1914, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against P. H. Sugrue, doing business under the name of P. H. Sugrue & Sons, Cleveland, Ohio, alleging the sale by said defendant, on or about October 23, 1912, under a guarantee that, among other things, the product complied with the Food and Drugs Act, of a quantity of so-called pure cider vinegar, which was adulterated and misbranded in violation of said act, and which said product on or about December 10, 1912, was shipped by the purchaser

thereof from the State of Ohio into the State of Pennsylvania. The product was labeled: "Wm. Edwards Co., Clifton Brand Pure Cider Vinegar, Cleveland, O. 49 Sugrue & Sons."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

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| Alcohol (grams per 100 cc) | 0.42 |
| Glycerol (grams per 100 cc) | 0.10 |
| Solids (grams per 100 cc) | 1.61 |
| Nonsugar solids (grams per 100 cc) | 1.45 |
| Reducing sugars (grams per 100 cc) | 0.16 |
| Ash (grams per 100 cc) | 0.62 |
| Alkalinity of soluble ash (cc N/10 acid per 100 cc) | 73.8 |
| Total $P_2O_5$ (mg per 100 cc) | 13.9 |
| Total acid (grams per 100 cc) | 4.02 |
| Ash in nonsugar solids (per cent) | 42.8 |

Adulteration of the product was alleged in the information for the reason that other substances, namely, a dilute solution of acetic acid or distilled vinegar and mineral matter, prepared in imitation of cider vinegar, had been substituted in whole or in part for cider vinegar, which said article purported to be. Misbranding was alleged for the reason that the statement "Pure Cider Vinegar," borne on the package in which said article was sold and delivered, was false and misleading because, as a matter of fact, said article was not pure cider vinegar but was a substance consisting in whole or in part of a dilute solution of acetic acid or distilled vinegar and mineral matter mixed and prepared in imitation of cider vinegar. Misbranding was alleged for the further reason that said article was an imitation of cider vinegar, prepared wholly or in part from dilute acetic acid or distilled vinegar and mineral matter, and said article was offered for sale and sold under the distinctive name of cider vinegar. Misbranding was alleged for the further reason that the article was labeled and branded so as to deceive and mislead the purchaser thereof into the belief that it was pure cider vinegar when not so; that is to say, said article was labeled and branded with the words "Pure Cider Vinegar," when, as a matter of fact, it was not pure cider vinegar but was an imitation cider vinegar, prepared from dilute acetic acid or distilled vinegar and mineral matter.

On April 30, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3463. Adulteration and misbranding of cheese. U. S. v. 50 Boxes of Misbranded and Adulterated Whey Cheese. Consent decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5599. I. S. No. 8109-h. S. No. 2122.)

On February 23, 1914, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 50 boxes, each containing 30 pounds of whey cheese, remaining unsold in the original unbroken packages at Portland, Oreg., alleging that the product had been shipped on or about January 23, 1914, by the Lake Zurich Creamery Co., Palatine, Ill., and transported from the State of Illinois into the State of Oregon, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Lake Zurich Creamery Company, 'Primost' Palatine, Illinois," and "Whey Cheese, Lake Zurich Brand, 'Primost,' 1 pound when packed."

It was alleged in the libel that the product was adulterated in that there had been mixed and packed with said cheese a substance, to wit, saccharin, which substance reduced, lowered, and injuriously affected the quality and strength of said whey

cheese. It was further alleged in the libel that the product contained and had added thereto a certain deleterious ingredient, to wit, saccharin, which rendered said cheese injurious to the health of the consumers thereof. It was further alleged that the whey cheese was misbranded in that a product, sweetened with saccharin, had been substituted in part for whey cheese. On April 6, 1914, the said Lake Zurich Creamery Co., claimant, having theretofore by stipulation admitted the allegations in the libel and consented to a decree, judgment of condemnation and forfeiture was entered and it was ordered that the product should be dealt with or destroyed, in conformity with the instructions of the Secretary of the Department of Agriculture of the United States, as is usual in such cases. (When this case was reported for action no claim was made by this department that the product was misbranded.)

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 28, 1914.*

**3464. Adulteration and misbranding of vinegar. U. S. v. 60 Barrels, More or Less, of So-Called Pure Sugar Vinegar. Decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5614. I. S. No. 8814-h. S. No. C-2.)

On or about March 9, 1914, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 60 barrels, each containing about 49 gallons, of so-called pure sugar vinegar, remaining unsold in the original unbroken packages, at Kansas City, Kans., alleging that the product had been shipped on or about December 5, 1913, by the Monarch Vinegar Works, Kansas City, Mo., and transported from the State of Missouri into the State of Kansas, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Distributed by the B. C. Twenhofel Mfg. Co., Pure Sugar Vinegar; 49 (?) gallons, Kansas City, Kansas."

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of distilled vinegar or dilute acetic acid, which had been mixed and packed with and substituted for the pure product in such a manner as to reduce or injuriously affect its quality and strength. Misbranding was alleged for the reason that to each of the barrels there was attached a brand or label in the words and figures as set forth above, which said label was misleading and false and calculated to induce the purchaser to believe that said so-called sugar vinegar was pure, when, in truth and in fact, the same was adulterated as hereinabove set forth, and that by reason of said false and misleading brand or label said barrels and the product therein were subject to seizure and confiscation under section 10 of the Food and Drugs Act as aforesaid.

On April 15, 1914, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal. On May 11, 1914, the case having come on for final hearing, it appearing that the said Monarch Vinegar Works, Kansas City, Mo., claimant, had executed a good and sufficient bond in the sum of $250 in conformity with section 10 of the act and that all the costs of the proceedings had been paid, it was ordered by the court that the product should be released to said claimant.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 28, 1914.*

**3465. Adulteration and misbranding of vinegar. U. S. v. 25 Barrels, More or Less, of So-Called Pure Apple Cider Vinegar. Decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5615. I. S. No. 8815-h. S. No. C-3.)

On March 9, 1914, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 barrels, each containing from 45 to 50 gallons, of a product purporting to be pure apple cider vinegar, remaining unsold in the original unbroken packages at, Kansas City, Kans., alleging

that the product had been shipped on or about December 5, 1913, by the Monarch Vinegar Works, Kansas City, Mo., and transported from the State of Missouri into the State of Kansas, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Distributed by the B. C. Twenhofel Mfg. Co., Kansas City, Kansas. Pure Apple Cider Vinegar, generator run, 50 gallons."

Adulteration of the product was alleged in the libel for the reason that said product consisted in whole or in part of distilled vinegar, or dilute acetic acid, which had been mixed and packed with and substituted for the pure product in such a manner as to reduce or injuriously affect its quality and strength. It was alleged in the libel that the product was misbranded for the reason that to each of said barrels there was attached a brand or label in words and figures as follows, to wit: "Distributed by the B. C. Twenhofel Mfg. Co., Kansas City, Kansas. Pure Apple Cider Vinegar, generator run, 50 gallons," which said label was misleading and false and calculated to induce the purchaser to believe that said so-called apple cider vinegar was pure, when in truth and in fact the same was adulterated as hereinbefore set forth, and that by reason of said false and misleading brand or label said barrels and the product therein were subject to seizure and confiscation under section 10 of the Food and Drugs Act as aforesaid.

On April 15, 1914, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be sold by the United States marshal. On May 11, 1914, the case having come on for final hearing, it appearing that the said Monarch Vinegar Works, Kansas City, Mo., claimant, had executed a good and sufficient bond in the sum of $250, in conformity with section 10 of the act, and that all the costs of the proceedings had been paid, it was ordered by the court that the product should be released to said claimant.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3466. Adulteration and misbranding of brandy. U. S. v. 9 Cases of Brandy, So Called. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5621. I. S. No. 3385-h. S. No. E-4.)

On March 11, 1914, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 9 cases, each containing 12 bottles of so-called brandy, remaining unsold in the original unbroken packages at Hartford, Conn., alleging that the product had been shipped on or about November 12, 1913, by the A. De Claremont Co. (Inc.), New York, N. Y., and transported from the State of New York into the State of Connecticut, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cases were labeled: "Superior quality A. De Claremont Company, type Brandy in case 1 doz. 5's, 84274, 11-13-13." The bottles were labeled: "Cognac Type Brandy. A. De Claremont Company, New York, Guaranteed Under the Pure Food and Drugs Act, June 30, 1906. Serial number 2257. Unexcelled for Purity and Mellowness, one of our many products, compounded and bottled in New York, and guaranteed by A. De Claremont Company, under the Pure Food and Drugs Act of June 30th, 1906, serial number 2257. 1/5 Gallon."

Adulteration of the product was alleged in the libel for the reason that the article was not a brandy of the cognac type, but that an imitation brandy artificially colored had been substituted in whole or in part, and had been mixed and packed with the brandy in such a manner as to reduce or lower the quality and strength of the product. Misbranding was alleged for the reason that the labels on the retail packages or bottles stated that the containers held "1/5 gallon," whereas in truth and in fact the contents only measured 648 cubic centimeters, that is to say, 14.4 per cent short of the declared volume, and, further, in that the labels on such retail packages or bottles

bore certain statements, designs, and devices regarding said brandy, so called, which were false and misleading in that the product was declared to be "Cognac Type Brandy," when in truth and in fact the product was an imitation brandy, artificially colored, which had been substituted for and mixed with the article in such a manner as to reduce its quality and strength; and the said labels also bore pictorial representations of clusters of grapes designed and intended to indicate the article to be grape brandy, when in truth and in fact an imitation brandy artificially colored had been substituted therefor.

On April 17, 1914, the said A. De Claremont Co., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be redelivered to said claimant upon payment of the costs of the proceeding and the execution of bond in the sum of $100, in conformity with section 10 of the act.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3467. Adulteration of canned sweet potatoes. U. S. v. 596 Cases of Canned Sweet Potatoes. Consent decree of condemnation, forfeiture, and destruction, as to 184 cases and 7 cans; 408 cases and 17 cans released to claimants.** (F. & D. No. 5625. I. S. No. 8836-h, 8837-h, 8838-h. S. No. C-10.)

On March 14, 1914, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 596 cases, each containing 24 cans of sweet potatoes, remaining unsold in the original unbroken packages at Shawnee, Okla., alleging that the product has been shipped on or about January 22, 1914, and transported from the State of Nebraska into the State of Oklahoma and charging adulteration in violation of the Food and Drugs Act. Seventy-three [173] cases and the cans therein were labeled: "North Hampton Brand Sweet Potatoes Guaranteed by Chandler & Ballard Company under the Food and Drugs Act, June 30, 1906, Serial No. 20066, Net Weight 34 oz., Packed by Chandler & Ballard Company, Exmore, Va. Golden Yellow Virginia Sweets, packed especially for fine family trade." Three hundred and thirty cases and the cans therein were labeled: "Indian Pride Brand Sweet Potatoes. Contents 1 lb. 15 oz. Guaranteed by Chandler & Ballard Company under the Food and Drugs Act, June 30, 1906. Serial No. 20066, packed by Chandler & Ballard Company, Exmore, Va. (Design sweet potatoes and Indian canoe scene.)" Ninety-three cases and the cans therein were labeled: "Annex Brand Sweet Potatoes. Guaranteed by Chandler & Ballard Company under the Food and Drugs Act, June 30, 1906, Serial No. 20066, Extra Standard Quality, packed by Chandler & Ballard Company, Exmore, Va. Contents 1 lb. 12 oz."

Adulteration of the product was alleged in the libel for the reason that the cans contained sweet potatoes which consisted in part of a filthy, decomposed, and [or] putrid vegetable substance and unfit for use.

On April 18, 1914, the Chandler & Ballard Co., a corporation, Exmore, Va., claimant, having appeared as owner of the goods and having by stipulation agreed as to what the facts were in the case, upon said agreement and stipulation in open court submitted, the court found that 184 cases and 7 cans of the goods were adulterated and decreed that they should be condemned and forfeited and destroyed by the United States marshal. It was further found by the court that the remaining 408 cases and 17 cans of sweet potatoes did not consist of filthy, decomposed, and putrid vegetable substance, but were in good condition and fit for consumption and use and ordered that said 408 cases and 17 cans found to be not adulterated be released to said claimant upon payment of the costs of the proceedings.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3468. Misbranding of Moreau's wine of anise. U. S. v. 5 Packages of So-Called Moreau's Wine of Anise. Decree of condemnation. Product released on bond.** (F. & D. No. 5630. I. S. No. 725-h. S. No. E-9.)

On March 16, 1914, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 5 packages of Moreau's wine of anise remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped and transported from the State of New Hampshire into the State of Massachusetts, and charging misbranding in violation of the Food and Drugs Act. The product was labeled in part: "Moreau's Wine of Anise Children's Soothing Wine Each ounce containing one third grain acetate morphine, 8 p. c. alcohol. No. 31969 guaranteed by La Fabrique Vin d'anis Moreau, under the Food and Drugs Act, June 30, 1906. This mild, sweet medicated wine is an excellent remedy for Colic, Diarrhœa, Dysentery, Indigestion, Sour Stomach, Vomiting, Cold, Cough, Painful Dentition, Irritable, Fretful and Sleepless children. To very weak children mix the medicine with a little milk or water."

Misbranding of the product was alleged in the libel for the reason that said drug and the packages and labels thereof contained and bore a statement, design, and device regarding the curative and therapeutic effect of said drug and the ingredients and substances contained therein which was false and fraudulent—that is to say, that said drug was a mild, sweet medicated wine and an excellent remedy for children in cases of diarrhœa, dysentery, indigestion, vomiting; that said drug was excellent for the use of children in cases of diarrhœa; all of which would lead the purchaser to believe that said drug was a remedy for said ailments, whereas, in truth and in fact, said drug was not a remedy for said ailments. Misbranding was alleged for the further reason that said drug and the packages and labels thereof contained and bore a statement, design, and device regarding said drug and the ingredients and substances contained therein which was false and misleading; that is to say, the following words which appeared thereon: "Moreau's Wine of Anise being compounded with a pure, mild wine, is preferable to any soothing remedy compounded with syrup," because by reason thereof the purchaser would be led to believe that said drug was a wine, whereas, in truth and in fact, said drug was not a wine.

On May 27, 1914, Louis J. Cote, claimant, Berlin, N. H., having filed his claim for the product and having filed satisfactory bond in conformity with section 10 of the act, judgment of condemnation was entered, and it was ordered by the court that the product should be delivered to said claimant upon payment of the costs of the proceedings.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *September 28, 1914.*

**3469. Adulteration and misbranding of bran. U. S. v. 5 Bags of Bran, More or Less. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5645. I. S. No. 9914-h. S. No. C-12.)

On March 24, 1914, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 5 bags of bran, more or less, remaining unsold in the original unbroken packages at Glencoe, Ky., alleging that the product had been shipped on March 12, 1914, and transported from the State of Ohio into the State of Kentucky, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration was alleged in the libel for the reason that the product purported to be bran contained screenings and corncob meal which had been substituted in part for the article, to wit, bran, which said screenings and corncob meal had been mixed and packed with and substituted for bran in such a manner as to reduce, lower, and

injuriously affect its quality and strength. Misbranding was alleged for the reason that said 5 bags were invoiced and billed as bran, and said designation was false and misleading in that said food product was a mixture of bran, screenings, and corncob meal, which had been substituted in part for bran.

On May 5, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 28, 1914.*

**3470. Adulteration of tomato purée. U. S. v. 50 Cases of Tomato Purée. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5655. I. S. No. 8919-h. S. No. E-16.)

On or about March 30, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 50 cases of canned tomato purée remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about March 20, 1914, and transported from the State of Maryland into the State of New York, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Asquith Brand Tomato Pulp made from Tomatoes and Fresh Tomato Trimmings with Great Care. Contents Weigh 10 Oz. Asquith Brand Packed by Andrews Packing Co. Crapo, Md."

Adulteration of the product was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance, to wit, yeasts and spores, bacteria, and decayed fragments of tomato.

On April 21, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1914.*

**3471. Adulteration of tomato pulp. U. S. v. 700 Cans, More or Less, of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5673. I. S. No. 9615-h. S. No. C-24.)

On April 10, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 700 cans of tomato pulp, remaining unsold in the original unbroken packages at Chicago, Ill., alleging that the product had been shipped on September [December(?)] 27, 1913, and transported from the State of Indiana into the State of Illinois, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance. Adulteration was alleged for the further reason that the product consisted wholly of a filthy, decomposed, and putrid vegetable substance.

On May 13, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1914.*

**3472. Adulteration of tomato pulp. U. S. v. 1,100 Cans of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5686. I. S. No. 8874-h. S. No. C-25.)

On April 14, 1914, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1,100 cans, each containing 5 gallons of tomato pulp, remaining unsold in the original unbroken packages at Wellington, Mo., alleging that the product had been shipped on or about February 19, 1914, and transported from the State of Indiana into the State of Missouri, and charging adulteration in violation of the Food and Drugs Act. The product bore no label.

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance containing yeast[s], spores, and bacteria.

On May 12, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *October 26, 1914.*

**3473. Adulteration of tomato pulp. U. S. v. 50 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5687. I. S. No. 8929-h. S. No. E-28.)

On April 14, 1914, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 50 cases of tomato pulp, remaining unsold in the original unbroken packages at Hoboken, N. J., alleging that the product had been shipped on or about April 4, 1914, and transported from the State of Maryland into the State of New Jersey, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Fox Creek Brand Tomato Pulp—Made from Tomatoes and Tomato Trimmings—Contents 10 oz. Packed by J. Frank Hearn."

Adulteration of the product was alleged in the libel for the reason that it consisted in part and in whole of a filthy, decomposed, and putrid vegetable substance, to wit, tomatoes.

On May 14, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *October 26, 1914.*

**3474. Adulteration of candy. U. S. v. 39 Boxes * * * of Candy. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5692. I. S. Nos. 21518-h, 21519-h, 21520-h. S. No. E-31.)

On or about April 22, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 39 boxes, each containing about 40 pounds of candy, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about April 14, 1914, and transported from the State of New Jersey into the State of New York, and charging adulteration in violation of the Food and Drugs Act. Eleven boxes were labeled No. 1, 13 were labeled No. 2, and 15 were labeled No. 3.

Adulteration of the product was alleged in the libel for the reason that it had been mixed with other substances so as to reduce and lower and injuriously affect its quality and strength, and consisted in part of a filthy vegetable substance due to contamination with smoke and of products resulting from combustion.

On May 11, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1914.*

**3475. Adulteration of desiccated eggs. U. S. v. 1 Barrel of Desiccated Egg Product. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5697. I. S. No. 8875-h. S. No. C-28.)

On April 23, 1914, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of one barrel, containing 100 pounds of desiccated egg product, remaining unsold in the original unbroken package at Kansas City, Mo., alleging that the product had been shipped on or about April 9, 1914, and transported from the State of Texas into the State of Missouri, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Head up. Rush. Yost Pie Co. Kansas City, Missouri. W. F. Ex. Charges Prepaid. Perishable. Keep Dry."

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of a filthy, putrid, and decomposed animal substance.

On June 4, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 30, 1914.*

**3476. Adulteration and misbranding of powdered milk. U. S. v. 2 Barrels, Each Containing * * * Product Purporting to be Powdered Milk. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5698. I. S. No. 21521-h. S. No. E-33.)

On or about April 24, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 barrels, each containing approximately 250 pounds of a product purporting to be powdered milk, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about April 14, 1914, and transported from the State of New Jersey into the State of New York, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Powd. Milk."

Adulteration of the product was alleged in the libel for the reason that it had been so mixed with other substances as to reduce and lower and injuriously affect its quality and strength, and further in that it consisted in part of a filthy vegetable substance due to contamination with smoke and other products resulting from combustion. It was alleged that the product was misbranded in violation of section 8, first general paragraph, and paragraph 2 under the title of "Food" of said act, in that said product was branded "Powd. Milk," when in fact it contained 80 per cent of added sucrose.

On May 11, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1914.*

**3477. Misbranding of cottonseed salad oil. U. S. v. 16 Cases of Cottonseed Salad Oil. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5720. I. S. No. 5753-h. S. No. C-31.)

On May 12, 1914, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 16 cases, each containing 12 cans of cottonseed salad oil, remaining unsold in the original unbroken packages, and in possession of A. Lume & Co., St. Louis, Mo., alleging that the product had been shipped on or about April 2, 1914, and transported in interstate commerce from the State of New York into the State of Missouri, and charging misbranding in violation of the Food and Drugs Act. The cases were labeled "12 cans Luna Cres. Salad Oil. A. Lume & Co., St. Louis, Mo."; the cans in the cases were labeled, "Marca (design crescent and star) Registrata Net Contents 1 Gall. Olio sopraffino Di Cotone Marca Luna Crescente Brand Finissimo Extra Quality Genuine Cottonseed Salad Oil." Sticker label on top of can: "105 Oz. Net."

Misbranding of the product was alleged in the libel for the reason that the cans did not contain one gallon of oil as stated on the labels thereon, but, on the contrary thereof, 4 of said cans contained an average shortage of 11.83 per cent on the basis of one gallon net content; and, further, said cans did not contain 105 ounces net of oil as stated on the labels, but, on the contrary thereof, 4 of said cans contained an average shortage of 1.19 per cent on the basis of 105 ounces net weight, and each of said cans so examined lacked an inch or more of being full of oil, and 23 of said cans upon being weighed showed an average shortage [1] of 12.17 per cent on the basis of one gallon net content, and an average shortage [1] of 1.57 per cent on the basis of 105 ounces net weight.

On May 18, 1914, the said A. Lume & Co., claimant concern, having admitted the allegations of the libel and consented to a decree, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be released to said claimant concern upon payment of the costs of the proceedings and the execution of bond in the sum of $500, in conformity with section 10 of the act, one of the conditions thereof being that the claimant should remove and erase from the cans the following, to wit, "1 gall." and "105 oz. net," where the same appeared on the labels and should label said cases as follows, to wit "$\frac{7}{8}$ gall."

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *October 26, 1914.*

**3478. Misbranding of evaporated milk. U. S. v. 100 Cases of Evaporated Milk. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5742. I. S. No. 21611-h. S. No. C-39.)

On June 2, 1914, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cases, each containing 6 1-gallon size cans of evaporated milk, remaining unsold in the original unbroken packages and in possession of the United Bakers' Supply Co., St. Louis, Mo., alleging that the product had been shipped on or about May 13, 1914, and transported from the State of Illinois into the State of Missouri, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: (on cases) "Six Cans One Gallon Size Average Net Weight 8 Pounds." (on cans) "Wesco Brand Evaporated Milk Manufactured Especially (for) Ice Cream Makers and Confectioners."

Misbranding of the product was alleged in the libel for the reason that an examination of samples from said cases showed the net contents of the retail packages examined to measure 0.898 gallon, and 17 cans of said evaporated milk were weighed and the

[1] The contents of the 23 cans were not actually weighed, but the weight of the contents was estimated from the actual gross weight and average tare weight.

average volume thereof was found to be 0.93 gallon, and the said statement appearing on said shipping cases, "one gallon size," was therefore false and misleading, for the reason that said cans did not contain an average of one gallon per can.

On June 12, 1914, the said United Bakers' Supply Co., claimant, having admitted the allegations of the libel and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $500, in conformity with section 10 of the act, one of the conditions of the bond being that said claimant should remove and erase from the cases the following, to wit, "one gallon size," where the same appeared upon the said cases.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *October 26, 1914.*

**3479. Adulteration of milk. U. S. v. George C. Windham. Plea of guilty. Fine, $10.** (F. & D. No. 236-c.)

On June 10, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said district, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against George C. Windham, Silver Springs, Md., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 26, 1914, from the State of Maryland into the District of Columbia, of a quantity of milk which was adulterated.

Adulteration of the product was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed with said food so as to reduce and lower and injuriously affect its quality and strength.

On June 10, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *October 26, 1914.*

**3480. Adulteration of milk. U. S. v. George White. Plea of guilty. Fine, $10.** (F. & D. No. 237-c.)

On June 19, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said district, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against George White, Alexandria, Va., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 22, 1914, from the State of Virginia, into the District of Columbia, of a quantity of milk which was adulterated.

Adulteration of the product was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed with said food so as to reduce and lower and injuriously affect its quality and strength.

On June 19, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *October 13, 1914.*

**3481. Adulteration of cream. U. S. v. Wm. T. Grimes. Plea of guilty. Fine, $5.** (F. & D. No. 238-c.)

On June 18, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Wm. T. Grimes, Washington, D. C., alleging the sale by said defendant, at the District aforesaid, in violation of the Food and Drugs Act, of a quantity of cream which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food, to wit, butter fat, had been left out and abstracted in whole and in part.

On July 18, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $5.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3482. Adulteration of milk. U. S. v. Horace H. Smith. Plea of guilty. Fine, $10.** (F. & D. No. 239–c.)

On June 20, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Horace H. Smith, Washington, D. C., alleging the sale by said defendant, in violation of the Food and Drugs Act, on May 20, 1914, at the District aforesaid, of a quantity of milk which was adulterated.

Adulteration of the product was alleged in the information for the reason that it had been mixed with water, which reduced and lowered its quantity and strength.

On June 20, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3483. Adulteration of milk. U. S. v. George A. T. Snouffer. Plea of guilty. Fine, $5.** (F. & D. No. 240–c.)

On July 2, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against George A. T. Snouffer, Adamstown, Md., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on May 27, 1914, from the State of Maryland into the District of Columbia, of a quantity of milk which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food had been left out and abstracted in whole and in part.

On July 2, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $5.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3484. Adulteration of milk. U. S. v. Rice E. Green. Plea of guilty. Fine, $5.** (F. & D. No. 241–c.)

On July 8, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Rice E. Green, Culpeper, Va., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on June 11, 1914, from the State of Virginia into the District of Columbia, of a quantity of milk which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food had been left out and abstracted in whole and in part.

On July 8, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $5.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3485. Adulteration and misbranding of tincture of ferri chloridi. U. S. v. Edward M. McComas. Plea of guilty. Fine, $10.** (F. & D. No. 242-c.)

On July 10, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Edward M. McComas, Washington, D. C., alleging the sale by said defendant, on March 16, 1914, at the District aforesaid, in violation of the Food and Drugs Act, of a quantity of tincture of ferri chloridi which was adulterated and misbranded.

Adulteration of the product was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of ferri chloridi, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation, nor was there plainly marked upon the label, bottle, box, or container of the said drug the actual strength, quality, or purity.

Misbranding was alleged for the reason that the product was branded and labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tr. Ferri Chloridi," meaning and importing to the purchaser thereof that the product was a tincture of ferri chloridi conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 10, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3486. Adulteration of milk. U. S. v. Algie P. Gregg. Plea of guilty. Fine, $15.** (F. & D. No. 243-c.)

On July 15, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Algie P. Gregg, Dickerson, Md., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 1, 12, and 13, 1914, from the State of Maryland into the District of Columbia, of quantities of milk which was adulterated.

Adulteration of the product was alleged in the information for the reason that it had been mixed and packed with a substance, to wit, water, which reduced and lowered its quality and strength.

On July 15, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $15.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3487. Adulteration of cream. U. S. v. Elijah E. Blough. Plea of guilty. Fine, $10.** (F. & D. No. 244-c.)

On July 16, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Elijah E. Blough, Manassas, Va., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on June 3, 1914, from the State of Virginia into the District of Columbia, of a quantity of cream which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food, to wit, butter fat, had been left out and abstracted in whole and in part.

On July 16, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3488. Adulteration of milk. U. S. v. David T. Stup. Plea of guilty. Fine, $10.** (F. & D. No. 245-c.)

On July 18, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against David T. Stup, Adamstown, Md., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on June 17, 1914, from the State of Maryland into the District of Columbia, of a quantity of milk which was adulterated.

Adulteration of the product was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed with said food so as to reduce and lower and injuriously affect its quality and strength.

On July 18, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *October 13, 1914.*

**3489. Adulteration of cream. U. S. v. Roger L. Dade. Plea of guilty. Fine, $5.** (F. & D. No. 246-c.)

On July 21, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Roger L. Dade, Jefferson, Md., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on May 27, 1914, from the State of Maryland into the District of Columbia, of a quantity of cream which was adulterated.

Adulteration of the product was alleged in the information for the reason that a valuable constituent of the said article of food, to wit, butter fat, had been left out and abstracted in whole and in part.

On July 21, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $5.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *October 13, 1914.*

**3490. Adulteration of milk. U. S. v. David M. Souder. Plea of guilty. Fine, $5.** (F. & D. No. 247-c.)

On July 21, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against David M. Souder, Lander, Md., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on June 25, 1914, from the State of Maryland into the District of Columbia, of a quantity of milk which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food, to wit, butter fat, was left out and abstracted in whole and in part.

On July 21, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $5.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *October 13, 1914.*

**3491. Adulteration of cream. U. S. v. William C. Lakin. Plea of guilty. Fine, $10.** (F. & D. No. 254-c.)

On August 25, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against William C. Lakin, Washington, D. C., alleging the sale by said defendant, on July 14, 1914, at the District aforesaid, in violation of the Food and Drugs Act, of a quantity of cream which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food had been left out and abstracted in whole and in part.

On August 25, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3492. Adulteration of milk. U. S. v. Luther Cleveland. Plea of guilty. Fine, $10.** (F. & D. No. 255-c.)

On August 25, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Luther Cleveland, Washington, D. C., alleging the sale by said defendant, on July 22, 1914, at the District aforesaid, in violation of the Food and Drug Act, of a quantity of milk which was adulterated.

Adulteration of the product was alleged in the information for the reason that it had been mixed and packed with a substance, to wit, water, which reduced and lowered its quality and strength.

On August 25, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3493. Misbranding of so-called champagne. U. S. v. Ernest Schraubstadter et al. (A. Finke's Widow). Pleas of guilty. Fine, $35.** (F. & D. Nos. 1873, 2013, 2268, 2327, 2352. I. S. Nos. 18710-b, 14078-b, 3113-c, 2800-c, 3108-c.)

At a stated term of the District Court of the United States for the Northern District of California the grand jurors of the United States within and for said district, after presentation by the United States attorney for the district aforesaid, upon reports by the Secretary of Agriculture, returned two indictments against Ernest Schraubstadter and Emile A. Groezinger, doing business under the firm name and style of A. Finke's Widow, San Francisco, Cal., charging:

(1) The shipment by said defendants, on April 6, 1910, in violation of the Food and Drugs Act, from the State of California into the State of New Mexico, of a quantity of so-called champagne which was misbranded.

Investigation of the product by the Bureau of Chemistry of this department showed that it was an artificially carbonated wine of domestic manufacture.

It was charged in the first count of one of the indictments that the product was misbranded for the reason that each of said bottles had three labels thereon regarding said so-called champagne, one label being made of tin foil which said label covered the mouth and neck of the bottle on which were stamped the words in blue type, "Extra Dry"; around the neck of the bottle and at the bottom of said tin foil label as a neck label was a second label containing the words "Extra Dry Champagne" and containing the impression of a circular star, crown and shield upon which shield was a monogram consisting of the letters "A. F. W."; and upon the main label of the bottle was an impression of a crown and shield upon which shield was a monogram consisting of the letters "A. F. W.", the word "Trade" being on the left side of said shield and the word "Mark" being on the right side of said shield, and said label contained the words: "Grand Vin Royal Extra Dry Dufleur Fils & Cie. Guaranteed under the Pure Food and Drugs Act June 30th 1906 Serial No. 7016"; and on the bottom of the cork of said bottle were the words "Champagne Mousseux"; that said labels and the words and impressions thereon and the words on said cork gave and would give to the purchaser, as defendant then and there well knew, the impression that the product contained in each of said bottles was a foreign product, to wit, champagne, which is, as defendants then and there well knew, a high-class wine made in France, and that said

labels and the words and impressions thereon and the words on said cork were then and there calculated to deceive and mislead the purchaser into the belief that the same was a foreign product, to wit, champagne, and that by and through said labels and the words and impressions thereon and the words on said cork it purported to be a foreign product, whereas, in truth and in fact, the said so-called champagne, as defendants then and there well knew, was not and is not a foreign product nor champagne at all, but was then and there, as defendants then and there well knew, a domestic product, to wit, a white wine artificially carbonated and made in California.

Misbranding of this product was charged in the other indictment for the reason that said labels were designed to mislead, and did mislead, the purchaser into the belief that he was buying, and that the product was in fact, a champagne manufactured in a foreign country, whereas, in truth and in fact, the words "Dufleur Fils & Cie" did not represent the manufacturer, but the same was a mere fiction and calculated to deceive and to give the impression to the purchaser that the so-called champagne was a foreign product, whereas, in truth and in fact, it was a domestic product consisting of California white wine artificially carbonated, and was not a champagne at all.

(2) The sale by said defendants, on December 20, 1909, under a written guarantee that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act of June 30, 1906, of a quantity of so-called champagne which was a misbranded article under said act, and which said article, on January 27, 1910, without having been changed in any particular, was shipped by the purchaser, from the State of California into the Territory of Arizona, in violation of the Food and Drugs Act.

Investigation of this product by said Bureau of Chemistry showed that it was not a bottle fermented wine and not of foreign origin.

Misbranding of the product was charged in the second count of one of the indictments for the reason that each of said bottles had three labels thereon regarding said so-called champagne, one label being made of tin foil which said label covered the mouth and neck of the bottle and on which were stamped the words in blue letters "Extra Dry;" around the neck of the bottle and at the bottom of said tin foil label as a neck label was a second label containing the words "Extra Dry Champagne" and containing the impression of a circular star, crown and shield; and upon the third and main label of said bottle was an impression of a crown and shield with an eagle upon the said shield, and said label contained the words and figures following, to wit: "Private Cuvee Champagne Type Louis Roucher & Cie. Brand Guaranteed under the Pure Food and Drugs Act, June 30th 1906, Serial No. 2748", and on the bottom of the cork of said bottle were the words "Champagne Mousseux"; that said labels and the words and impressions thereon and the words on said cork gave and would give to the purchaser, as defendants then and there well knew, the impression that the product contained in each of said bottles was a foreign product, to wit, champagne, which is, as defendants then and there well knew, a high class wine made in France, and that said labels and the words and impressions thereon and the words on said cork were then and there calculated to deceive and mislead the purchaser into the belief that the same was a foreign product, to wit, champagne, and that by and through said labels and the words and impressions thereon and the words on said cork it purported to be a foreign product, whereas, in truth and in fact, the said so-called champagne, as defendants then and there well knew, was not and is not a foreign product nor champagne at all but was then and there, as defendants then and there well knew, a domestic product, to wit, a white wine artificially carbonated and made in California.

(3) The sale by said defendants, on June 15, 1910, under a written guarantee that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act of June 30, 1906, of a quantity of so-called champagne, which was a misbranded article under the Food and Drugs Act, and which said article, on June 15, 1910, without having been changed in any particular, was shipped by the purchaser

thereof, from the State of California into the State of Washington, in violation of said Food and Drugs Act.

Examination and investigation of this product by said Bureau of Chemistry showed that it was a cloudy ordinary white wine artificially carbonated and of domestic origin.

Misbranding of this product was charged in the third count of one of the indictments for the reason that each of said bottles had a label thereon regarding said so-called champagne, as follows: "Champagne" under which was an impression of a crown, and under the crown were the following words and figures, "Carte D'or Brand Guaranteed under the National Pure Food & Drugs Act, June 30th 1906"; on the bottom of the cork of said bottle were the words "Champagne Mousseux"; that said label and the words and impressions thereon and the words on said cork gave and would give to the purchaser, as defendants then and there well knew, the impression that the product contained in each of said bottles was a foreign product, to wit, champagne, which is, as defendants then and there well knew, a high class wine made in France, and that said label and the words and impressions thereon and the words on said cork were then and there calculated to deceive and mislead the purchaser into the belief that the same was a foreign product, to wit, champagne, and that by and through said label and the words and impressions thereon and the words on said cork it purported to be a foreign product, whereas, in truth and in fact, the said so-called champagne, as defendants then and there well knew, was not and is not a foreign product nor champagne at all but was then and there, as defendants then and there well knew, a domestic product, to wit, a white wine artificially carbonated and made in California.

(4) The sale by said defendants, on February 3, 1910, under a written guarantee that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act of June 30, 1906, of a quantity of so-called champagne, which was a misbranded article within the meaning of said act, and which said article, without having been changed in any particular, was, on June 21, 1910, shipped by the purchaser thereof, from the State of California into the Territory of Arizona, in violation of the Food and Drugs Act.

Investigation and examination of this product by said Bureau of Chemistry showed that it was a cloudy domestic white wine which was artificially carbonated.

Misbranding of this product was charged in the fourth count of one of the indictments for the reason that each of said bottles had two labels thereon regarding said so-called champagne, one label around the neck of the bottle containing the words "Extra Dry Champagne" and containing the impression of a circular star, crown and small maltese cross; and upon the second label on said bottle was an impression of a crown and the words and figures following, to wit: "Extra Dry Perle de la Champagne Brand Product of California Guaranteed under the Pure Food and Drug Act June 30th 1906, Serial No. 7016"; and on the bottom of the cork of said bottle were the words "Champagne Mousseux"; that said labels and the words and impressions thereon and the words on said cork gave and would give to the purchaser, as defendants then and there well knew, the impression that the product contained in each of said bottles was a foreign product, to wit, champagne, which is, as defendants then and there well knew, a high class wine made in France, and that said labels and the words and impressions thereon and the words on said cork were then and there calculated to deceive and mislead the purchaser into the belief that the same was a foreign product, to wit, champagne, and that by and through said labels and the words and impressions thereon and the words on said cork it purported to be a foreign product, whereas, in truth and in fact, the said so-called champagne, as defendants then and there well knew, was not and is not a foreign product nor champagne at all but was then and there, as defendants then and there well knew, a domestic product, to wit, a white wine artificially carbonated and made in California.

(5) The sale and shipment, on February 19, 1910, by said defendants, under a written guarantee that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act of June 30, 1906, of a quantity of so-called champagne, which was a misbranded article within the meaning of said act, and which said article, without having been changed in any particular, was shipped by said defendants and the purchaser thereof, from the State of California into the State of Washington, in violation of the Food and Drugs Act.

Investigation and examination of this product by said Bureau of Chemistry showed that it was a cloudy white wine of domestic origin artificially carbonated.

Misbranding of this product was charged in the fifth and sixth counts of one of the indictments for the reason that each of said bottles had three labels thereon regarding said so-called champagne, one label being made of tin foil which said label covered the mouth and neck of the bottle and on which were stamped the words in blue letters "Extra Dry"; around the neck of the bottle and at the bottom of said tin foil label as a neck label was a second label containing the words "Extra Dry Champagne" and containing the impression of a circular star, crown and shield; and upon the third and main label of said bottle was an impression of a crown and shield, upon the left side of which was the word "Trade" and on the right side of which was the word "Mark", and the said label contained the words and figures following, to wit: "Grand Prix Brand Champagne Product of California Guaranteed under the National Pure Food & Drugs Act, June 30th 1906. B. Arnhold & Co., San Francisco Distributors"; and on the bottom of the cork of said bottle were the words "Champagne Mousseux"; that said labels and the words and impressions thereon and the words on said cork gave and would give to the purchaser, as defendants then and there well knew, the impression that the product contained in each of said bottles was a foreign product, to wit, champagne, which is, as defendants then and there well knew, a high class wine made in France, and that said labels and the words and impressions thereon and the words on said cork were then and there calculated to deceive and mislead the purchaser into the belief that the same was a foreign product, to wit, champagne, and that by and through said labels and the words and impressions thereon and the words on said cork it purported to be a foreign product, whereas, in truth and in fact, the said so-called champagne, as defendants then and there well knew, was not and is not a foreign product nor champagne at all, but was then and there, as defendants then and there well knew, a domestic product, to wit, a white wine artificially carbonated and made in California.

On February 26, 1914, a plea of guilty to each indictment was entered on behalf of the defendant firm and on May 2, 1914, the court imposed a fine of $35.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *October 13, 1914.*

**3494. Alleged misbranding of Dodson's remedy. U. S. v. Dodson's Remedy Co. Tried to the court and a jury. Verdict of not guilty.** (F. & D. No. 2584. I. S. No. 8004-c.)

On June 13, 1911, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Dodson's Remedy Co., a corporation, Norfolk, Va., alleging shipment by said company in violation of the Food and Drugs Act, on July 25, 1910, from the State of Virginia into the State of Massachusetts, of a quantity of a certain drug known as Dodson's remedy, which was alleged to have been misbranded. The product was labeled: (Design of a Maltese cross.) "Dodson's Remedy. Prompt and Effectual. For headache, toothache, nervousness, sciatica, neuralgia, earache, rheumatic pains, lumbago, etc. * * * Phenylacetamid 12 grs. to the fluid oz. with 30% alcohol. * * * Contains no chloral or morphia, and is perfectly safe, and may be taken without injury if used according to directions." (On circular) "This remedy contains no habit-forming drugs."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

| | |
|---|---|
| Acetanilid (per cent) | 2.22 |
| Caffein | 0.41 |
| Salicylic acid (per cent) | 2.26 |
| Potassium bromid (per cent) | 3.93 |

Misbranding af the product was alleged in the information for the reason that the label on each of the packages bore false and misleading statements: (1) The said statement that the article, that is to say, Dodson's remedy, was an effectual remedy for headache, toothache, and other disorders, was false and misleading, in that it conveyed the impression that said article possessed therapeutic properties with effectual remedial action in the disorders enumerated as above, whereas, in fact, said preparation did not possess therapeutic properties with effectual remedial action, in the case of headache or any other of the said enumerated disorders. (2) The said statement that said remedy contained no habit-forming drugs was false and misleading, in that said preparation in fact contained caffein and acetanilid, both of which substances are habit-forming drugs. (3) The said statement that said preparation "is perfectly safe and may be taken without injury if used according to directions" was false and misleading, in that it conveyed the impression that the product contained no harmful ingredients, or ingredients which might be harmful if indiscriminately used, where[as], in fact said preparation contained, as above stated, caffein and acetanilid, each of which is a harmful and dangerous substance when used indiscriminately and without competent medical direction. (4) Each of the said packages failed to bear a statement on the label affixed thereto of the quantity and proportion of acetanilid contained in the contents thereof, whereas, in fact, of the the contents of each of said packages, 2.22 per cent was acetanilid.

On June 11, 1914, the case having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the case was given to the jury, and after due deliberation the jury returned into the court with its verdict of not guilty.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *October 13, 1914.*

**3495. Adulteration and misbranding of vinegar. U. S. v. 75 Barrels of Vinegar. Default decree of condemnation and forfeiture. Product ordered released on bond.** (F. & D. No. 3139. I. S. No. 1950-d. S. No. 1143.)

On November 1, 1911, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 75 barrels of vinegar, remaining unsold in the original unbroken packages as Oshkosh, Wis., alleging that the product had been shipped by Spielmann Bros. Co., Chicago, Ill., on October 5, 1911, and transported from the State of Illinois into the State of Wisconsin, and charging adulteration and misbranding in violation of the Food and Drugs Act. Forty-five of the barrels were labeled, "Guaranteed Cider Vinegar, 4½ per centum, Spielmann Brothers Co."; 20 barrels were labeled, "Guaranteed Cider Vinegar, 4 per centum, Spielmann Brothers Co."; and 10 barrels were labeled, "Guaranteed Cider Vinegar, 5 per centum, Spielmann Brothers Co."

Adulteration of the product was alleged in the libel for the reason that it had been so mixed and diluted with acetic acid or distilled vinegar and to such an extent and amount as to reduce, lower, and injuriously affect its quality, substance, and strength, and, further, in that it had been mixed and diluted to such an extent with such acetic acid or distilled vinegar that said substance known as acetic acid or distilled vinegar had been wholly or in part substituted for the product of pure cider vinegar. Misbranding was alleged for the reason that said barrels so labeled as aforesaid contained

an article of food and an article which enters into the composition of food which was an imitation of cider vinegar and was offered for sale and was sold in interstate commerce as aforesaid under the distinctive name of "Guaranteed Cider Vinegar," whereas, in truth and in fact, said vinegar was not cider vinegar, but consisted largely of a mixture of dilute acetic acid or distilled vinegar. Misbranding was alleged for the further reason that said label or brand as aforesaid bore the statement that the product was guaranteed cider vinegar in such form and display as to give the impression that the contents were pure cider vinegar, when, in truth and in fact, an unlike substance, distilled vinegar, had been intermingled therewith and substituted wholly or in part for pure cider vinegar, and that all of such statements on said labels as aforesaid were false and misleading and calculated to deceive and mislead the purchasers thereof.

On February 27, 1914, the said Spielmann Bros. Co. having withdrawn their demurrer to the libel theretofore interposed and having consented to a decree, the court ordered and pronounced that all persons claiming any right, interest or title in and to said vinegar were in contumacy and default, and that the product should be condemned as misbranded. It was further ordered that the product should be released to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $500, in conformity with the act.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *October 14, 1914.*

**3496. Adulteration and misbranding of cider vinegar. U. S. v. 19 Barrels and 30 Half-barrels of Sirup Vinegar; and U. S. v. 19 Barrels and 30 Half-barrels of Cider Vinegar. Product released on bond. Libel against sirup vinegar dismissed.** (F. & D. No. 3143. I. S. Nos. 996-d, 997-d. S. No. 1146.)

On November 1, 1911, the United States attorney for the Southern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 19 barrels and 30 half-barrels of sirup vinegar, and 19 barrels and 30 half-barrels of cider vinegar, remaining unsold in the original unbroken packages at Point Pleasant, W. Va., alleging that the product had been shipped from the State of Pennsylvania into the State of West Virginia, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cider vinegar was labeled: "Price and Lucas—Pure Cider Vinegar Guaranteed—Alleghany, Pa."

Adulteration of this product was alleged in one of the libels for the reason that a dilute solution of acetic acid or distilled vinegar had been mixed therewith so as to reduce and lower and injuriously affect its strength, quality, and purity. Misbranding was alleged for the reason that none of the barrels or half-barrels contained "Price and Lucas—Pure Cider Vinegar" as they purported to contain, as evidenced by the markings on said barrels and half-barrels, but they contained a compound or mixture consisting wholly or in part of a dilute solution of acetic acid or distilled vinegar which had been mixed and prepared in imitation of cider vinegar and substituted therefor, and the labeling of said barrels and half-barrels as containing "Price and Lucas Pure Cider Vinegar" was misleading and false, so as to deceive and mislead the purchaser and was a misbranding within the meaning of said act.

On April 29, 1914, the case against the cider vinegar having come on for a hearing and the Price and Lucas Cider Vinegar Co., claimant, having tendered a bond in the sum of $400, in conformity with section 10 of the act, it was ordered by the court that the product, after having been properly branded, should be released to said claimant company or to the party in whose possession the product was found, and that said claimant should pay the cost of the proceedings. Through a misunderstanding the case against the sirup vinegar was dismissed.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *October 13, 1914.*

**3497. (Supplement to Notice of Judgment 2848.) Misbranding of creamthick. U. S. v. Oscar J. Weeks. Decision of the United States Circuit Court of Appeals for the Second Circuit affirming a judgment of conviction of the United States District Court for the Southern District of New York.** (F. & D. No. 3919. I. S. No. 3404-d.)

On May 13, 1913, Oscar J. Weeks, doing business under the name of O. J. Weeks & Co., New York, N. Y., was convicted after trial before the court and a jury of a violation of the Food and Drugs Act in the shipment by said defendant on September 28, 1911, from the State of New York into the State of Missouri, of a quantity of a product called creamthick which was misbranded, and fined $100.

On August 14, 1913, the said defendant, by his attorney, filed in the United States District Court for the Southern District of New York a petition for a writ of error to said District Court, which said writ was allowed by the court and filed August 15, 1913.

On June 18, 1914, the case having come on for final hearing before the said Circuit Court of Appeals (Coxe, Wright, and Rogers, Circuit Judges), the judgment of conviction in the lower court was affirmed, as will more fully appear from the following decision by the Circuit Court of Appeals (Rogers, Circuit Judge):

The defendant has been convicted of a crime committed in violation of the Pure Food and Drugs Act, approved June 30, 1906. The information charged the defendant with having shipped from New York City to St. Louis, Mo., a certain article of food, labeled in part as follows:

"Cream thick—Serial No. 2049—Manufactured by O. J. Weeks & Co., New York, New York. It is guaranteed to contain no gelatine, gum arabic, egg albumen or similar article."

This label, it was charged, was false and misleading and calculated to mislead and deceive purchasers in that the article of food contained as one of its ingredients an article similar to gum arabic, to wit, Indian gum. The information was signed by the United States attorney, but was not verified, nor were any affidavits filed or submitted to the court. The defendant appeared and demurred to the information, and in specification of points under his demurrer alleged "that the said information is not supported by a verification or oath showing personal knowledge or probable cause." His demurrer was overruled, and being required to plead he pleaded not guilty. At the close of the trial his counsel renewed his motion that the information be dismissed for reasons before stated, but his motion was denied and the case was submitted to the jury and a verdict of guilty was rendered.

The question we have to decide, therefore, is whether an attorney for the United States can proceed in the courts of the United States by information to prosecute one who is alleged to have committed a misdemeanor, where the information is not verified or supported by an affidavit showing personal knowldge or probable cause.

There can be no conviction or punishment for a crime without a formal and sufficient accusation. A court can acquire no jurisdiction to try a person for a criminal offense unless he has been charged with the commission of the particular offense and charged in the particular form and mode required by law. If that is wanting his trial and conviction is a nullity, for no person can be deprived of either life, liberty, or property without due process of law. The forms or modes of accusation which the law recognizes are: Indictment or presentment by a grand jury, and information by the public prosecutor.

The colonists who came to this country from England brought with them the common and statute laws of England as they existed at the time of their emigration and in so far as they were applicable to the local circumstances of the colonies which they established. Among the principles of the common law which they brought were those which regulated the mode of proceeding in criminal cases—the law relating to indictments and informations and the right to trial by jury—although in the colonies as well as in England various statutes had abolished, prior to the Declaration of Independence, a number of the oppressive provisions of English law relating to criminal trials. Among the principles which had thus been abrogated, for example, was that which denied to a person accused of a capital crime the right to have compulsory process for his witnesses and that which withheld from him the right to examine on oath those witnesses who voluntarily appeared for him, as well as that which forbade him the aid of counsel in his defense, except only as regarded questions of law. (See The United States *v.* Reid, 12 How., 360, 363 (1851).)

The proceeding by information is said to have been unpopular in England and to some extent in the colonies. But it has never been abolished in England, although

in some of our States it has been abolished. At the time of the Declaration of Independence it was a familiar mode of criminal procedure in all the colonies.

When the statute of 3 Henry VII extended the jurisdiction of the court of star chamber and informations became restricted in practice to that court, the members of which were the sole judges of the law, the fact and the penalty, Blackstone (4 Commentaries, 310) states that a very oppressive use was made of them for something more than a century, "so as continually to harass the subject and shamefully enrich the Crown." And when the court of star chamber was abolished in the time of Charles I and proceedings by information were again used in the court of King's bench, the prejudice which had arisen from the long abuse of this process was so strong that it was strenuously contended that all proceedings by information were illegal as being contrary to the nature of English laws and to Magna Charta. But the objections were overruled, Sir Matthew Hale saying:

"That although in all criminal cases the most regular and safe way, and most consonant to the statute of Magna Charta, is by presentation or indictment of 12 sworn men, yet, for crimes inferior to capital ones, proceedings might be by information, and this from long and frequent practice was certainly established as the law of the land." (5 Mod., 463; Show., 106; Bacon's Ab. Information, A; 2 Hawk., P. C. 260; 4 Black. Com., 130; 1 Ersk. Speeches, 275; State *v.* Dover, 9 N. H., 468 (1838).)

And the unpopularity of informations was not restricted to the mother country, but, as we have already said, existed to some extent in this country. Mr. Justice Wilson, of the Supreme Court of the United States, and who was also a member of the Constitutional Convention of 1787, in the lectures which he delivered as professor of law in the University of Pennsylvania in 1790-1792, after calling attention to the two kinds of informations—those filed ex officio by the public prosecutor and those carried on in the name of the Commonwealth or Crown, but in fact at the instance of some private person or common informer—said:

"The first have been the source of much, the second have been the source of intolerable, vexation; both were the ready tools by using, Empson and Dudley, and an arbitrary star chamber which fashioned the proceedings of the law into a thousand tyrannical forms. Neither, indeed, extended to capital crimes; but ingenious tyranny can torture in a thousand shapes without depriving the person tortured of his life."

After calling attention to the fact that in England restraints had been imposed upon informations at the instance of private persons but not upon those filed ex officio by the public prosecutor, he went on to say:

"By the constitution of Pennsylvania, both kinds are effectually removed. By that constitution, however, informations are still suffered to live; but they are bound and gagged. They are confined to official misdemeanors; and even against those they can not be slipt but by leave of the court. By that constitution,'no person shall for any indictable offense, be proceeded against criminally by information'—'unless by leave of the court, for oppression and misdemeanor in office.'" (2 Wilson's Works, Andrews ed., p. 450.)

There seems to be no doubt that prosecution by information is as ancient as the common law itself. The subject had no reason to complain because this method of prosecution was adopted, for as Blackstone (4 Commentaries, p. 310) states:

"The same notice was given, the same process was issued, the same pleas were allowed, the same trial by jury was had, the same judgment was given by the same judges, as if the prosecution had been by indictment."

Moreover, it seems to have always been the rule that the substantial parts of the information had to be drawn with as much exactitude as the corresponding parts of an indictment for the same offense.

In the early days of the Federal Government informations were principally used, if not exclusively used, for the recovery of fines and forfeitures. And Mr. Justice Story, in his Commentaries on the Constitution, section 1780, and written in 1833, said, in speaking of informations:

"This process is rarely recurred to in America; and it has never yet been formally put into operation by any positive authority of Congress under the National Government, in mere cases of misdemeanors; though common enough in civil prosecutions for penalties and forfeitures."

But within the last 50 years prosecutions by informations have increased greatly in the Federal courts. (See ex parte Wilson, 114 U. S., 417, 425.)

It appears, as Stephens states in his History of the Criminal Law, volume 1, page 295, that from the earliest times the law officers of the King accused persons of offenses not capital in his own court without the intervention of a grand jury. But the right to prefer a criminal information is at common law restricted to misdemeanors. "At

common law an information will lie for any misdemeanor, but not for a felony." (22 Cyc., 187, and cases there cited.)

The offense charged in the information now under consideration was plainly a misdemeanor, and for more than 200 years the right has been established in England to prosecute by information and without the sanction of a grand jury a person charged with having committed a misdemeanor.

Bacon in his Abridgment, volume 3, page 635, after stating that an information differs principally from an indictment in that "an indictment is an accusation founded by the oath of 12 men, whereas an information is only the allegation of the officer who exhibits it," goes on to explain that there were two kinds of criminal informations in use in England under the common-law procedure. The first, which was for offenses more immediately against the King, was filed, he says, by the attorney general ex officio and without leave of court. The second, which was for offenses against private individuals, was exhibited by masters of the Crown, and, as matter of course, prior to the statute of 4 and 5 William and Mary, c. 18. But after that statute was enacted informations of the second class, he declares, could not be filed except upon leave of court, and all such informations had to be supported by the affidavit of the person at whose suit it was filed.

In the United States it has been suggested that informations brought by the prosecuting officers answer to the informations filed by the masters of the Crown, and which, as said, had to be supported by affidavit, and not to the informations of the first class, or those which related more immediately to the King and which could be filed without affidavit. Those who make this suggestion rely upon the statement found in Blackstone's Commentaries, volume 4, page 309, where that distinguished commentator says:

"The objects of the King's own prosecutions, filed ex officio by his own attorney general, are properly such enormous misdemeanors as peculiarly tend to disturb or endanger his Government, or to molest or affront him in the regular discharge of his royal functions. For offenses so high and dangerous, in the punishment or prevention of which a moment's delay would be fatal, the law has given to the Crown the power of an immediate prosecution, without waiting for any previous application to any other tribunal; which power, thus necessary not only to the ease and safety, but even to the very existence of the executive magistrate, was originally reserved in the great plan of the English constitution, wherein provision is wisely made for the due preservation of all its parts. The objects of the other species of informations filed by the master of the Crown office upon the complaint or relation of a private subject, are any gross and notorious misdemeanors, riots, batteries, libels, and other immoralities of an atrocious kind, not peculiarly tending to disturb the Government (for those are left to the care of the attorney general), but which, on account of their magnitude or pernicious example, deserve the most public animadversion."

Now this statement may seem to imply that the attorney general's right to file informations for misdemeanors was not unlimited, but was restricted to misdemeanors which tended to disturb or endanger the Government. But if this was his meaning it is evident that he was mistaken in his understanding of the law. Chitty in his great work on the Criminal Law, page 384, says:

"Informations may be filed by the attorney general for any offense below the dignity of felony which tends, in his opinion, to disturb the Government or immediately interfere with the interests of the public or the safety of the Crown. He most frequently exercises this power in cases of libels on Government or high officers of the Crown, etc. He seems, indeed, at his option to exact it when any offense occurs which may thus be prosecuted in the Crown office. He may file an information against anyone whom he thinks proper to select, without oath, without motion or opportunity for the defendant to show cause against the proceeding."

And Cole, in his work on Criminal Informations, page 9, says that—

"The attorney general may exhibit an ex officio information for any misdemeanor whatever."

And Hawkins, in his Pleas of the Crown, volume 2, page 369, says:

"As to the first of these particulars, viz: In what cases such informations lie, it hath been holden that the King shall put no one to answer for a wrong done principally to another without an indictment or presentment, but that he may do it for a wrong done principally to himself. But I do not find this distinction confirmed by experience; for it is everyday's practice, agreeable to numberless precedents, to proceed by way of information, either in the name of the attorney general or of the master of the Crown office, for offenses of the former kind, as for batteries, cheats, seducing a young man or woman from their parents in order to marry them against their consent, or for any other wicked purpose; spiriting away a child to the plantations, rescuing persons from legal arrests, perjuries and subornations thereof, forgeries, conspiracies, whether to accuse

an innocent person or to impoverish a certain set of lawful traders * * * and other such like crimes done principally to a private person, as well as for offenses done principally to the King."

In Clark on Criminal Procedure, pages 128 and 129, it is said:

"By an early English statute (4 and 5 William and Mary, c. 18), however, which is old enough to have become a part of our common law, if applicable to our conditions, it was provided that informations by masters of the Crown office could only be filed by leave of court and that they should be supported by the affidavit of the person at whose suit they were preferred. The law remained that informations filed by the attorney general (and, as already stated, he could file them for any misdemeanor) need not be verified, and that he was the sole judge of the necessity or propriety of filing them. * * * There is some authority for the proposition that the kind of information to be used at common law in this country is that which in England was filed by the masters of the Crown office. * * * But by the better opinion, the other kind of information is the one in use with us."

In Bishop's Criminal Procedure, section 144, it is said:

"In our States the criminal information should be deemed to be such, and such only, as in England is presented by the attorney or solicitor general. This part of the English common law has plainly become common law with us. As with us the powers which in England were exercised by the attorney or solicitor general are largely distributed among our district attorneys, whose office does not exist in England, the latter officers would seem to be entitled, under our common law, to prosecute by information, as a right adhering to their office and without leave of court."

If it is true, and it seems to be, that the district attorneys exercise the powers which in England were exercised by the attorney or solicitor general, then they are entitled to proceed upon information and that without leave of the court and without affidavit.

It is necessary to keep in mind what Mr. Stephen in his General View of the Criminal Law of England, page 156, calls the "most characteristic principle of the law of England" on the subject of criminal procedure, namely, that in that country "everyone, without exception, has the right to use the Queen's (King's) name for the purpose of prosecuting any person for any crime." The statute (4 and 5 William and Mary, c. 18) was intended to restrict the right of prosecution by private and not public prosecutors. Prior to that act it had been within the power of any individual to file an information without disclosing to the court the grounds upon which it was exhibited. (4 T. R. 290.) And the meaning of the statute was that the clerk of the Crown should thereafter file no information of a private prosecutor without leave of the court, and that the fact that there was probable cause for filing it should be disclosed in order that the court might know whether to grant leave; and it was further intended to preclude the issuance of process on such informations without recognizance. (Comyn's Digest, vol. 4, p. 558, note.) But there was no intention to limit the right of the attorney general to prosecute by information, as he always has done. It was not necessary in England either before or after the statute that he should obtain leave of the court before filing his information, and there was, therefore, not the same reason why he should verify any information which he filed. Moreover, he was acting throughout under his oath of office, and it was not assumed that he would proceed upon information without probable cause.

We think that the weight of authority is that in this country, as the text writers assert, the informations used by the prosecuting officers are the informations used by the attorney general in England and not those exhibited by masters of the Crown and which were governed by 4 and 5 William and Mary, c. 18. And as at common law an information could be filed by the attorney general simply on his oath of office and without verification, it has been held in this country that verification of an information by a prosecuting attorney is unnecessary unless required by some constitutional or statutory provision. (Long *v.* People, 135 Ill., 435; People *v.* Graney, 91 Mich., 646; State *v.* Pohl, 170 Mo., 422, 22 Cyc., 281.)

We pass, therefore, to inquire whether there is anything in the Constitution of the United States or in the acts of Congress which in any way alters the common law respecting the right of the prosecuting officers of the Government of the United States to proceed by information in criminal cases in the Federal courts.

The Constitution of the United States leaves all offenses against the United States open to prosecution by information except those which are capital or infamous. The restriction as to those offenses is contained in the fifth amendment:

"No persons shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger."

The Supreme Court in ex parte Wilson (144 U. S., 417, 1885) authoritatively decided what meaning is to be attached to the word "infamous" in this connection. The court held that a crime punishable by imprisonment for a term of years with hard labor is an infamous crime. In the constitutional sense it is not the character of the crime, but the nature of the punishment which renders the crime infamous. The offense with which the defendant in this case is charged is not an infamous one, but one upon which he might be tried upon information.

The acts of Congress not only have not prohibited the use of informations, but have on the contrary expressly authorized their use in certain cases. (See sec. 1022 of the Revised Statutes.)

The fourth amendment to the Constitution of the United States provides as follows:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; no warrant shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

Mr. Justice Story, in his Commentaries on the Constitution, volume 2, section 1902, in speaking of this amendment, states that:

"It is little more than the affirmance of a great constitutional doctrine of the common law."

If that be true and if it also be true that at common law the Attorney General could file an information without verification or affidavit of probable cause, his oath of office being regarded as sufficient, then this particular amendment should not be regarded as altering the rule upon that subject. In United States *v.* Maxwell (3 Dillon, 275, 1875), in an opinion written by Judge Dillon, it is said:

"We are of the opinion, therefore, that offenses not capital or infamous, may, in the discretion of the court be prosecuted by information. We can not recognize the right of the district attorney to proceed on his own motion and shall require probable cause of guilt to appear by the oath of some credible person before we will allow an information to be filed and a warrant of arrest to issue. But with these safeguards there is no more reason to fear an oppressive use of information than there is reason to fear an abuse of the powers of a grand jury."

The facts in the case were that prior to the term complaint on oath had been made before a United States commissioner charging the defendant with several violations of the internal-revenue laws, and the defendant was arrested upon a warrant issued by the commissioner and held to answer to the district court. At the term, the district attorney, upon the said complaint, warrant, and recognizance, moved the court for leave to file criminal information against the defendant, charging him with said offenses, which leave was granted and the information accordingly filed. The defendant appeared and pleaded guilty. Afterwards his counsel made a motion in arrest of judgment upon the ground that the defendant could only be punished criminally upon an indictment and not upon an information. The motion in arrest of judgment was overruled, the court using, in the course of its opinion, the language already quoted. The case can not be regarded as holding that an information must be verified. The court, in a dictum, announced that it would not permit an information to be filed, and a warrant of arrest to issue without some evidence being presented under oath that probable cause of guilt existed.

In United States *v.* Smith (40 Fed., 755, 1889), in a case which arose in the Circuit Court for the Eastern District of Virginia, Judge Hughes said:

"A preliminary question raised in the argument was whether the district attorney may, of right, by virtue of his official prerogative, file informations charging citizens with offenses brought officially to his knowledge. This can not be done, under the rules and practice of this court, except upon previous complaint under oath, after opportunity has been given the accused to appear before the examining officer, and to confront the witnesses testifying in support of the complaint. This requisite makes it necessary that the district attorney shall have leave from the court to file an information; and, if it is within the discretion of the court to grant the leave or not, then the right to file is not a prerogative of the prosecutor's office, and the court may require him before granting leave to bring the accused, by rule or other proceeding, before the court, to show cause, if cause there be, against the filing of the information."

The decision does not hold that an information must be verified.

The case most frequently cited in the Federal courts on this subject is that of United States *v.* Tureaud (20 Fed., 621), decided in 1884 in the fifth circuit by Judge Billings, of the eastern district of Louisiana. It was decided in that case that informations must be based upon affidavits which show probable cause arising from facts within the

knowledge of the parties making them. And the court quashed an information which was based on an affidavit which read:

"George A. Dice, being duly sworn, says: All the statements and averments in the foregoing information are true, as he verily believes."

It was conceded—

"that under the usages of the Government of Great Britain this information belongs to the class of formal accusations which could be made by the King in his courts without any evidence and against all evidence."

The opinion then continued:

"But the adoption of the fourth amendment affected all kinds and modes of prosecution for crimes or offenses, for there can be no legal pursuit of accused persons without apprehension. All prosecutions require warrants. An information, a suggestion of a criminal charge to a court, is a vain thing unless it is followed by a capias. The procedure by information, therefore, after it was acted upon by this amendment lost its prerogative function or quality. It could not thereafter be the vehicle of preferring any arbitrary accusation—not by kings—because we have in the department of criminal law no successor to him, so far as he represented a right to institute, if it pleased him, unsupported incriminations, nor by the district attorney, nor any other officer of the United States, for the Constitution has said, in effect, that in no way nor manner shall magistrates or courts issue warrants, except upon proofs, which are to be upon oath and make probable excuse."

What is said as to the necessity for a verification of the information we think is correct in any case where the application for the issuance of a warrant of arrest is based on the information. In the United States *v.* Polite (35 Fed., 58 (1888)) in the district court for the district of South Carolina, it is said that—

"informations must be based upon affidavits which show probable cause arising from facts within the knowledge of the parties making them and that mere belief is not sufficient."

In this case the information was not sworn to, but accompanying it were the papers of the commissioner who held the preliminary examination, including the sworn testimony of the witnesses taken in the presence of the accused. It was held that this was sufficient and a motion to quash was refused.

In Johnston *v.* United States (87 Fed., 187 (1898)) in the Circuit Court of Appeals for the Fifth Circuit the two preceding cases are referred to and approved. The information was not sworn to, but was accompanied by an affidavit. The court said:

"The affidavit on which the information was based was wholly insufficient *to warrant the arrest and trial* of the plaintiff in error and is altogether too general in terms as to the offense against the United States said to have been committed; and it shows no knowledge, information, nor even belief on the part of the affiant as to the guilt of the party charged, beyond the bare statement that 'there is probable cause to believe that the said offense has been committed by P. T. Johnston.' However false the affidavit may be it would be next to impossible to assign and prove perjury upon it."

In the United States *v.* Baumert (179 Fed., 735, 742 (1910)) District Judge Ray in a carefully prepared opinion said:

"Under the common law the information was not necessarily verified; but as stated, this led to abuses and the adoption of the fourth amendment to the Constitution which in legal effect demands that no warrant shall issue upon an information filed by the United States attorney, unless it states facts, a crime, etc., and is supported by the oath of the officer filing it, who must speak from personal knowledge or by the oaths or affirmations of others who speak from personal knowledge."

There is nothing in the opinion rendered which holds that an information must in all cases be verified or supported by an affidavit showing probable cause. But only that an information must be so verified or supported when an application for the issuance of a warrant is based on it. The sole question before the court was as to the issuance of a warrant and the court declined to direct its issuance on an information made on the information and belief of the district attorney alone.

In United States *v.* Morgan (222 U. S., 274, 282 (1911)) the Supreme Court, in the case of one prosecuted for a violation of the Pure Food and Drugs Act, said:

"A further answer is that as to this and every other offense the fourth amendment furnishes the citizen the nearest practicable safeguard against malicious accusation. He can not be tried on an information unless it is supported by the oath of some one having knowledge of facts showing the existence of probable cause. Nor can any indictment be found until after an examination of witnesses, under oath, by grand jurors, the chosen instruments of the law to protect the citizen against unfounded

prosecutions, whether they be instituted by the Government or prompted by private malice."

This statement as to the necessity of the information being supported by the oath of some one having knowledge of facts showing the existence of probable cause is obiter dictum. The court has certainly never decided that under such circumstances as exist in the case now before us no trial could be had.

In Foster's Federal Practice, fifth edition, section 494, page 1659, this usually accurate writer states the rule as follows:

"An information can not be filed without leave of the court. * * * An information must be supported by an affidavit showing probable cause for the prosecution arising from facts within the knowledge of the affiant; or by the depositions of witnesses taken upon a preliminary examination or affidavits upon which a warrant of arrest against the accused was previously issued, which may be sufficient."

The limitation imposed by this amendment is a limitation solely upon the powers of the Federal Government and not upon the powers of the State governments. This principle of construction was settled as early as 1833 by a decision written by Chief Justice Marshall in the leading case of Barron *v.* Baltimore (7 Peters, 243) and has been adhered to by the Supreme Court in numerous cases which have subsequently arisen. But in the constitutions of some of the States a provision exists similar to that embodied in the fourth amendment. And we may briefly inquire as to the effect given to it, as respects informations, by the decisions of the State courts. They have held in a number of cases that a constitutional provision similar in terms to that embodied in the fourth amendment to the Constitution of the United States is violated if proceedings are had under an information which is not supported by the oath or affirmation of any person. (Lustig *v.* People, 18 Col., 217 (1893); State *v.* Gleason, 32 Kans., 245 (1884); Myers *v.* People, 67 Ill., 503 (1873); Eichenlaub *v.* State, 36 Ohio St., 140 (1880); DeGraff *v.* State, 2 Okl. Cr., 519 (1909); Thornberry *v.* State, 3 Tex. App., 36 (1877); State *v.* Boulter, 5 Wyom., 236 (1894).) But the State courts are not agreed in this view, some of them having reached a contrary conclusion. (See State *v.* Smith, 114 La., 322 (1905); State *v.* Guglielmo, 46 Oregon, 250 (1905); Territory *v.* Cutinola, 4 N. Mexico, 160 (1887).)

In the case at bar the information was not verified, neither was it supported by any affidavit. The information begins, "Now comes Henry A. Wise, United States attorney for the Southern District of New York, leave having been first had and obtained, and respectfully informs this court that," etc. It does not appear, however, that in obtaining leave of the court to file the information there was ever presented to the court any complaint under oath or any affidavit showing probable cause to believe that the person accused in the information had ever committed the offense charged against him.

If the fourth amendment makes it necessary that under all circumstances an information must be verified or supported by an affidavit showing probable cause, then proceedings had in the prosecution of the defendant can not be sustained. But the right secured to the individual by the fourth amendment, as we understand it, is not a right to have the information by which he is accused of crime verified by the oath of the prosecuting officer of the Government or to have it supported by the affidavit of some third person. His right is to be protected against the issuance of a warrant for his arrest except "upon probable cause supported by oath or affirmation" and naming the person against whom it is to issue. If the application for the warrant is made to the court upon the strength of the information, then the information should be verified or supported by an affidavit showing probable cause to believe that the party against whom it is issued has committed the crime with which he is charged. But if no warrant has issued, no arrest been made, and the person has voluntarily appeared, pleaded to the information, been tried, convicted, and fined, we fail to discover wherein any right secured to him by the fourth amendment has been infringed. The fact that in the case at bar the defendant demurred to the information because it was not verified and he then pleaded not guilty only after his objection to the demurrer was overruled does not affect the matter. There was nothing in the ruling of the court that deprived him of his constitutional right to have no warrant issued for his arrest "but upon probable cause, supported by oath or affirmation." No such warrant has been at any time issued and no application for its issuance has ever been so much as requested.

The Pure Food and Drugs Act makes it a crime against the United States if any part of the label on goods sent in interstate commerce is false and misleading. The goods shipped by the defendant were on the label "guaranteed to contain no gelatine, gum arabic, egg albumen, or similar article." The claim of the Government is that

while the goods contained no gum arabic they did contain India gum and that India gum was "similar" to gum arabic. The jury found that this was so after being instructed that if they had a reasonable doubt on the subject they must find for the defendant. There was sufficient evidence to warrant the submission of the case to the jury and we find no error in the rulings of the court.

Judgment affirmed.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *October 13, 1914.*

**3498. Adulteration and misbranding of vinegar. U. S. v. 10 Barrels of Vinegar. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 4016. I. S. No. 13345-d. S. No. 1393.)

On May 20, 1912, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 10 barrels of vinegar remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been transported from the State of New York into the State of Massachusetts, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Compound 80% Molasses Vinegar, 20% Distilled Vinegar."

Adulteration of the product was alleged in the libel for the reason that it purported to consist of 80 per cent molasses vinegar and 20 per cent distilled vinegar, whereas, in truth and in fact, said food contained 50 per cent distilled vinegar, said increased amount of 30 per cent of said distilled vinegar being mixed and packed with said food so as to reduce, lower and injuriously affect its quality and strength. Misbranding was alleged for the reason that the product was labeled and branded "Compound 80% Molasses Vinegar, 20% Distilled Vinegar," which statement was false and misleading, in that it would deceive and mislead the purchaser to believe that said food consisted of molasses vinegar and distilled vinegar in the quantities stated, whereas, in truth and in fact, said food contained a greater quantity of said distilled vinegar, to wit, 50 per cent thereof.

On July 6, 1914, the Fleischmann Co., New York, N. Y., having filed a satisfactory bond in conformity with section 10 of the act, judgment of condemnation and forfeiture was entered and it was ordered that the product should be delivered to said claimant upon payment of the costs of the proceedings.

D. F. HOUSTON, *Secretary of Agriculture*

WASHINGTON, D. C., *October 13, 1914.*

**3499. Adulteration and misbranding of jams. U. S. v. Albert A. Deiser & Co. Plea of guilty. Fine, $10 and costs.** (F. & D. No. 4046. I. S. Nos. 893-d, 894-d.)

On May 22, 1913, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Albert A. Deiser & Co., a corporation, Des Moines, Iowa, alleging shipment by said company, in violation of the Food and Drugs Act, on or about July 24, 1911, from the State of Iowa into the State of Nebraska, of quantities of two brands of jam which was adulterated and misbranded. One of the brands was labeled: "Mrs. Morrison's Brand Pure Food Products Blackberry-Apple Jam. Contents 35% Blackberry, 35% Apple, 30% Granulated Sugar, 1/10 of 1% Benzoate of Soda. Serial No. 10631. Prepared by A. A. Deiser & Company, Des Moines, Iowa. Net weight 14 ounces." The other brand was labeled: "Mrs. Morrison's Brand Pure Food Products Raspberry-Apple Jam. Contents 35% Raspberry, 35% Apple, 30% Granulated Sugar, 1/10 of 1% Benzoate of Soda. Serial No. 10631. Prepared by A. A. Deiser & Company, Des Moines, Iowa. Net weight 28 ounces."

Analyses of samples of the products by the Bureau of Chemistry of this department showed the following results:

| Determination. | Blackberry-apple. | Raspberry-apple. |
|---|---|---|
| Solids in vacuo at 70° C. (per cent) | 48.04 | 42.86 |
| Nonsugar solids (per cent) | 11.22 | 9.59 |
| Sucrose, Clerget (per cent) | 8.05 | 9.42 |
| Reducing sugars as invert before inversion (per cent) | 29.77 | 23.85 |
| Commercial glucose (factor 163) | None. | None. |
| Polarization, direct, at 22° C. (°V.) | − 1.4 | + 1.6 |
| Polarization, invert, at 22° C. (°V.) | −12.0 | −10.8 |
| Ash (per cent) | 0.54 | 0.54 |
| Soluble solids by evaporation (per cent) | 40.26 | 34.69 |
| Insoluble solids by difference (per cent) | 7.78 | 8.17 |
| Insoluble solids direct (per cent) | 8.54 | 9.05 |
| Sodium benzoate (from benzoic acid, gravimetrically) (per cent) | 0.21 | 0.05 |
| Sodium benzoate (by titration of above) (per cent) | 0.19 | ..... |
| Artificial color detected | None. | None. |
| Yeasts, spores, and bacteria (microscopic examination) | Abundant. | Abundant. |
| Net weight: | | |
| Actual weight (ounces) | 17.85 | 31.9 |
| Excess (per cent) | 27.5 | 14.0 |

Adulteration of both brands was alleged in the information for the reason that a substance, to wit, a jam made from dried fruit, had been substituted wholly or in part for the genuine article; and, further, in that a valuable constituent of the article, to wit, the water soluble portion of the fruit, had been wholly or in part abstracted or left out. Misbranding of the blackberry-apple jam was alleged for the reason that the statement "Blackberry-Apple Jam," borne on the label, was false and misleading because it conveyed the impression that the product was a jam made from fresh fruit, whereas, in fact, it was made from dried fruit, which fact was not stated upon the label. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser, being labeled "Blackberry-Apple Jam," thereby conveying the impression that it was made from fresh fruit, when, as a matter of fact, it was made from dried fruit, which fact was not stated upon the label. Misbranding of the raspberry-apple jam was alleged for the reason that the statement "Raspberry-Apple Jam," borne on the label, was false and misleading because it conveyed the impression that the product was a jam prepared from fresh fruit, whereas, in fact, it was prepared from dried fruit, which fact was not stated on the label. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser, being labeled "Raspberry-Apple Jam," thereby creating the impression that the product was a jam prepared from fresh fruit, when, as a matter of fact, it was prepared from dried fruit, which fact was not stated upon the label.

On May 18, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $10 and costs.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *October 13, 1914.*

**3500. Adulteration of grape juice. U. S. v. 5 Cases of Sparkling Grape Juice. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 4330. I. S. No. 21407-d. S. No. 1465.)

On July 19, 1912, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 5 cases of grape juice remaining unsold in the original unbroken packages at Oshkosh, Wis., alleging that the product had been shipped on or about June 15, 1912, and transported from the State of Illinois into the State of Wisconsin, and charging adulteration in

violation of the Food and Drugs Act. The product was labeled: (On cases) "50 1/4 Bottles Sparkling Wines Keep Dry Unfermented Catawba Grape Juice." (On bottles, neck label) "Preserved with Sulphur dioxide ($SO_2$) being about .028 of one per cent due to the burning of sulphur in the Storage Casks." (Principal label) "Serve Cold. Teo Nett Non-Alcoholic Sparkling Grape Juice."

Adulteration of the product was alleged in the libel for the reason that a substance, to wit, water, had been mixed with and packed with said grape juice so as to reduce and lower and injuriously affect its quality and strength, and, further, in that certain substances, to wit, sugar and water, had been in part substituted for the said article, grape juice.

On March 3, 1914, no claimant having appeared for the product, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

D. F. Houston, *Secretary of Agriculture.*

Washington, D. C., *December 31, 1914.*

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Schorndorfer & Eberhard Co 3278
cherry and apple:
Schorndorfer & Eberhard Co 3278
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plum:
Castleman-Blakemore Co 3292
raspberry:
National Pickle & Canning Co 3429
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Schorndorfer & Eberhard Co 3278
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Purée, tomato. *See* Tomato.
Quinin laxative tablets. *See* Tablets.
Radam's microbe killer. *See* Microbe killer.
Raisins:
Consumers' Fruit Co 3441
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Raspberry jam. *See* Jam.
jelly. *See* Jelly.
preserves. *See* Preserves.
Red thyme oil. *See* Oil.
Riesling wine. *See* Wine.
Rosemary oil. *See* Oil.
Russell's white drops. *See* Drops.
Russian cantharides. *See* Cantharides.
Rye flour. *See* Flour.
St. Johns bread:
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Salad dressing: N.J.No.
Schorndorfer & Eberhard Co 3294
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Sambuca cordial. *See* Cordial.
Sardines. *See* Fish.
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Higgins, R. R., Co 3448
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Sirup, cane:
Kroger Grocery & Baking Co 3137
Wilder, D. R., Mfg. Co 3096
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Weisenburger, A. L. 3222,3229
sorghum:
Gordon, B. L., & Co 3339
National Mfg. Co 3339
sorghum compo:
Hubinger, J. C., Bros. Co 3317
Lehmann-Higginson Grocery Co 3317
tamarind:
Bernagozzi, W. P 3364
Smith's agricultural liniment. *See* Liniment.
Soda-water flavor, lemon:
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Soluble lemon flavor. *See* Extract.
Solvent, Dr. Sullivan's sure:
Sullivan's, Dr., Sure Solvent Co 3130
Sorghum compo. *See* Sirup.
sirup. *See* Sirup.
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Weisenburger, A. L. 3222
Specific No. 3, Dr. Hilton's:
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Sprudel water. *See* Water.
Stramoline:
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jam. *See* Jam.
juice:
Dunn, E. H. 3037
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Succotash, canned:
Fretchling, E. L. 3229
Weisenberger, A. L. 3229
Sugar butter:
Marshalltown Syrup & Sugar Co 3290
wafers. *See* Wafers.
Sullivan's, Dr., sure solvent. *See* Solvent.
Sweet birch oil. *See* Oil.
Sweet feed. *See* Feed.
Sweet oil. *See* Oil.
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Tablets, acetanilid compound:
Burrough Bros. Mfg. Co 3003
acetanilid and sodium bromid compound:
Webster, W. A., Co 3019
anti-vomiting:
Webster, W. A., Co 3019
aspirin:
Webster, W. A., Co 3019

Tablets—Continued. N.J.No.
bismuth and calomel compound:
Webster, W. A., Co 3019
cold:
Webster, W. A., Co 3019
hypodermic, soluble:
Webster, W. A., Co 3051
morphin sulphate:
Webster, W. A., Co 3051
nitroglycerin:
Chicago Pharmacal Co 3405
quinin laxative:
Webster, W. A., Co 3019
salol:
Webster, W. A., Co 3019
sodium salicylate:
Webster, W. A., Co 3019
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Coroneos Bros 3048, 3093
Ehrat, G., & Co 3176
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Cruikshanks Bros. Co 3250
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Austin Canning Co 3144, 3148
Boyle, John, Co 3149
Foote, D. E., & Co 3205, 3209, 3456
Frankfort Canning Co 3195
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Darley Park Brewery 3070
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Ebling Brewing Co 3375
Krug, Fred, Brewing Co 3107
Western Brewery Co 3001
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Ballantine, P., & Sons 3374
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Standard Brewery Co 3221
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Sweet Valley Wine Co. 3271
Laubenheimer:
Sweet Valley Wine Co. 3271
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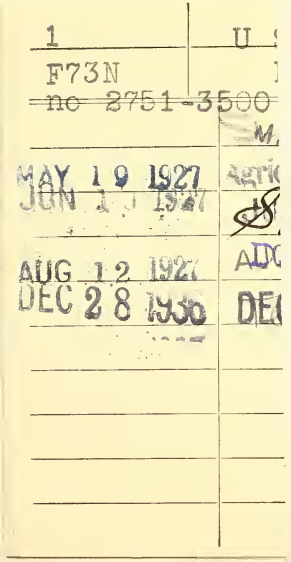
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